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No. 2382

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

CANTON INSURANCE OFFICE, LIMITED, a corporation,
THE YANG-TSZE INSURANCE ASSOCIATION, a corporation, Ap-
pellants,

vs.


INDEPENDENT TRANSPORTATION COMPANY, a corporation,
THE CHINA TRADERS INSURANCE COMPANY, a corporation,
Appellees.

APOSTLES ON APPEAL

Upon Appeal from the United States District Court for the
Western District of Washington, Northern Division

FILED

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THE CHINA TRADERS INSURANCE COMPANY, a corporation,
Appellees.

APOSTLES ON APPEAL

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NAMES AND ADDRESSES OF COUNSEL

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E. S. McCORD,

1309 Hoge Building, Seattle, Washington,

Proctors for Libellant and Appellee, Independent
Transportation Company.

WILLIAM H. GORHAM,

653 Colman Building, Seattle, Washington,

Proctor for Respondents and Appellants Yang-Tsze
Insurance Association, Limited.
Canton Insurance Office, Limited.

In the United States Circuit Court of Appeals for the Ninth Circuit.

CANTON INSURANCE OFFICE, LIMITED, ET AL, Appellants,

vs.

INDEPENDANT TRANSPORTATION COMPANY ET AL, Appellees.

Stipulation with Reference to Printed Record and Sending Up Original Exhibits as Supplemental Record.

It is hereby stipulated by and between the parties hereto that there shall not be printed in the Record on appeal herein any of the Exhibits referred to in the Exceptions to the third amended libels or introduced in evidence, and filed in said causes, in the United States District Court for the Western District of Washington, Northern Division; and that all of the original of said Exhibits, except as otherwise stipulated by the parties hereto, shall be transmitted to the above entitled court, under the certificate of the Clerk of said District Court and seal thereof, as a supplemental Record herein.

Dated Seattle, Washington, January 12th, 1914.

WILLIAM H. GORHAM,
Proctor for Appellants,

IRA D. CAMPBELL,
KERR & McCORD,
Proctors for Appellees,
Independent Transportation Company.

(Endorsed): Filed in the U. S. District Court Western Dist. of Washington Northern Division Jan. 12 1914 Frank L. Crosby, Clerk By.....Deputy.

In the United States Circuit Court of Appeals for the Ninth
Circuit.

No. 3849

CANTON INSURANCE OFFICE, LIMITED, ET AL, Appellants,

vs.

INDEPENDANT TRANSPORTATION COMPANY, ET AL, Appellees.

Order for Sending up Original Exhibits as Supplemental
Record.

Agreeable to the written stipulation of the parties hereto
this day filed herein, and, it being, in the opinion of the
undersigned the Judge who signed the Citation on appeal
herein, proper,

It is now here ordered by the undersigned, the Judge who
signed the Citation on appeal herein that the Clerk of the
United States District Court for the Western District of
Washington, Northern Division, transmit under his cer-
tificate and the seal of said District Court, all of the original
exhibits referred to in the exceptions to the third amended
libels, or offered in evidence, and filed in said cause in said
District Court, except as may by stipulation be otherwise
provided, as a supplemental Record herein.

Dated Seattle, Washington, January 12th, 1914.

JEREMIAH NETERER,

United States District Court for Western
District of Washington.

(Endorsed): Filed in the U. S. District Court Western
Dist. of Washington, Northern Division, Jan. 12 1914 Frank
L. Crosby, Clerk. ByDeputy.

STATEMENT.

Time of Commencement of Suit: December 14, 1908.

Names of Parties to Suit:: Cause No. 3848: Libellant,
Independent Transportation Company, a corporation; Res-
pondent, The Yang-Tsze Insurance Association, Limited,
corporation;

Cause No. 3849: Libellant, Independent Transportation
Company, a corporation; Respondent, Canton Insurance Of-
fice, Limited, a corporation.

Consolidation of Causes: Stipulation as to consolidating causes, filed January 4, 1909. Order consolidating causes made and entered January 4, 1909.

Dates for Filing Respective Pleadings:

Third Amended Libels filed April 22, 1910.

Exceptions to Third Amended Libels filed March 28, 1910.

Answers to Third Amended Libels filed March 30, 1910.

Issuance of Process and Service thereof: On December 14, 1908, issued Citation in causes Nos. 3848, 3849, and delivered same to Marshal for service.

On December 14, 1908, the Marshal returned the same into the Clerk's office with return endorsed thereon showing service thereof on respondents on December 14, 1908.

Reference to Commissioner: Consolidated causes under No. 3849 were referred to Commissioner to take and report the testimony on April 18, 1910, and said Commissioner, on November 8, 1912, duly returned into the Clerk's office his transcript of the testimony so taken together with the Exhibits offered in evidence before said Commissioner, which said testimony and exhibits were duly filed in said cause on the 8th day of November, 1912.

Depositions: The depositions of Louis Rosenthal et al and of W. H. Le Boyteaux et al were taken by stipulation, returned and filed in the Clerk's office and thereafter published by order of Court of date March 15, 1911.

Time of Trial: The consolidated causes came on for trial on issues of law, to wit, on exceptions to third amended libels before the Hon. C. H. Hanford, District Judge, on March 28, 1910; and for final hearing on the merits, causes submitted without argument upon written briefs of respective parties before Hon. Jeremiah Neterer, District Judge, on October 13, 1913.

Final Decree: December 15, 1913.

Notice of Appeal: December 30, 1913.

In the United States District Court, for the Western District
of Washington, Northern Division.

No. 3848

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Li-
bellant,

vs.

THE YANG-TSZE INSURANCE ASSOCIATION, LTD., Respondent,
No. 3849

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Li-
bellant,

vs.

CANTON INSURANCE OFFICE, LTD., Respondent,
No. 3858

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Li-
bellant,

vs.

CHINA TRADERS INSURANCE COMPANY, Respondent.

STIPULATION.

It is hereby stipulated by and between the parties to the above entitled causes that an order may be entered by the above entitled Court, consolidating said causes for the purpose of trial, but nothing herein shall be construed as admitting any liability on the part of any one of said respondents for either or both of the other respondents above named.

And it is further stipulated that upon final determination of said causes on the merits by the court, separate decrees may be entered in each of said causes, if so desired by any of the parties to this stipulation.

Dated Seattle, December 31st, 1908.

IRA A. CAMPBELL,
Proctor for Libellant in each cause.

WILLIAM H. GORHAM,
Proctor for each of the above named Respondents.

(Endorsed): Filed in the U. S. District Court, Western Dist. of Washington, Jan. 4, 1909. R. W. Hopkins, Clerk. A. N. Moore, Deputy.

In the United States District Court, for the Western District
of Washington, Northern Division.

No. 3848

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Li-
bellant,

vs.

THE YANG-TSZE INSURANCE ASSOCIATION, LTD., Respondent,

No. 3849

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Li-
bellant,

vs.

CANTON INSURANCE OFFICE, LTD., Respondent,

No. 3858

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Li-
bellant,

vs.

CHINA TRADERS INSURANCE COMPANY, Respondent.

ORDER.

Upon the Stipulation heretofore filed by the parties
to the above entitled causes, it is ordered that said causes
be consolidated under cause No. 3849, for the purposes of
trial thereof.

Dated Seattle, Jany. 4, 1909.

C. H. HANFORD,
Judge.

(Endorsed): Filed in the U. S. District Court, Western
Dist. of Washington, Jan. 4, 1909. R. M. Hopkins, Clerk.
A. N. Moore, Deputy.

In the United States District Court for the Western District of Washington, Northern Division. In Admiralty.

Consolidated Case No. 3849

No. 3848. Third Amended Libel in Personam

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Libellant,

vs.

THE YANG-TSZE INSURANCE ASSOCIATION, LIMITED, a corporation, Respondent.

To the Hon. C. H. Hanford, Judge of the above entitled Court::

The libel of the Independent Transportation Company, a corporation, libellant, against The Yang-Tsze Insurance Association, Limited, a corporation, respondent, in a cause of contract, civil and maritime, alleges as follows:

I.

That libellant, the Independent Transportation Company, is a corporation organized and existing under and by virtue of the laws of the State of Washington, and having its principal place of business at Seattle, Washington.

II.

That libellant believes and therefore alleges, respondent, The Yang-Tsze Insurance Association, Limited, to be a corporation, and maintaining an agent within the jurisdiction of this Court, but the country under the laws of which said corporation is organized is unknown to libellant, and it therefore demands strict proof of the same.

III.

That libellant was, during all times herein mentioned, and particularly from prior to July 3rd, 1907, to about August 13th, 1908, both inclusive, the sole owner of the Steamer "Vashon", an American vessel of 244 gross tons register, official number 126766.

IV.

That for and in consideration of the payment of the sum of One Hundred and Sixty-five Dollars (\$165.00), by libel-

lant unto respondent, respondent insured, by its policy of insurance No. 7/349, Three Thousand Dollars (\$3,000.00) on account of libellant from the 3rd day of July, 1907, until the 3rd day of July, 1908, upon its interest as owner in the body, machinery, tackle, apparel and other furniture of said Steamer "Vashon", against the adventures and perils of the seas, fires, pirates, assailing thieves, jettisons, barratry of the mariners (but not of the master), embezzlement and illicit trade, or any trade in articles contraband of war excepted in all cases; and all other losses and misfortunes that shall come to the hurt or damage of the vessel insured, or any part thereof, to which insurers are liable by the Rules and Customs of Insurance in San Francisco, including the Rules for adjustment of losses printed on the back of respondent's policy of insurance and the provisions of the Civil Code of California, excepting such losses and misfortunes as are excluded by said policy.

Said policy further provided: "In case of any loss or misfortune resulting from any peril insured against, the party insured hereby engages for himself or themselves, him or their factors, servants or assigns, to sue, labor and travel, and use all reasonable and proper means for the security, preservation, relief and recovery of the property insured, or any part thereof. * * * , to the charges whereof this company will contribute in proportion as the sum insured is to the whole sum at risk; nor shall the acts of the insured or insurers in recovering, saving and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of abandonment."

V.

That, thereafter, while properly and securely moored on the evening of the 15th day of December, 1908, said Steamer "Vashon" sunk and by reason thereof became damaged, and libellant, as owner of said steamer, suffered losses and incurred expenses in laboring to save and preserve said steamer, as hereinafter set forth.

VI.

That immediately after said steamer sunk, operations were commenced to save and preserve the same, and she was on the 11th day of January, 1908, floated and moored; that upon the raising of said steamer, she was found by the surveyors to be in such a filthy condition with fuel oil

and mud that it was impossible to ascertain the extent of damage, and they, therefore, recommended that said steamer be hauled out of the water, strakes of planking cut from her bottom and all dirt washed out, in order that a survey in detail might be made.

That pursuant to such recommendations, said steamer was, as soon as possible, on the 12th day of February, 1908, hauled out and was thereafter, with all due diligence opened up and cleaned for the purpose of making a detailed survey of said damage and of securing an estimated cost of repairs, which survey was, with all due diligence, completed by Messrs Frank Walker and Capt. S. B. Gibbs, surveyor of respondent Insurance Company, on the 15th day of April, 1908, and the estimated cost of repairs obtained.

VII.

That libellant, on April 20th, 1908, by it's agents Johnson & Higgins, served upon respondent due and regular proofs of said loss, as in such cases required, and thereafter, on April 28th, 1908, respondent advised libellant, through the latter's aforesaid agents, that respondent denied all liability under it's aforesaid policy.

VIII.

That, thereafter, libellant, ascertaining that said steamer would not be worth repairing and was continually deteriorating, and deeming that the sale of said steamer would be for the best interests of all concerned, and would be what a prudent uninsured owner would do, requested respondent's consent to such sale, and in reply thereto, respondent advised libellant through the latter's aforesaid agents, that it, respondent, did not have any interest in said steamer and nothing whatever to say in response to said request; and, thereupon, on or about the 13th day of August, 1908, libellant sold said steamer for the best and highest price obtainable therefor, to-wit: the sum of Seven Hundred and Fifty Dollars (\$750.00).

IX.

That the sound value of said steamer at the time of said loss was the sum of \$15,000.00, and in her damaged condition the sum of \$750.00, and the depreciation in value of said vessel and loss to libellant, by reason of the damag-

ing of said vessel, was the sum of \$14,250.00; that respondent's proportion of said loss for which it is liable under its aforesaid policy upon the basis of a partial loss is the sum of \$2,850.00.

X.

That libellant incurred in laboring to save and preserve said steamer by way of salvage charges and costs and the cost of making an adjustment of said loss, the sum of \$4,230.60, of which respondent is liable to pay unto libellant under it's policy the sum of \$846.12.

XI.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore libellant prays that a citation in the due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against said respondent and it be cited to appear and answer upon oath all and singular the matters so articulately propounded; and that this Honorable Court may be pleased to decree the payment of the amount due, with interests and costs; and that libellant may have such other and further relief as in law and justice it is entitled to receive.

INDEPENDENT TRANSPORTATION COMPANY,

By A. B. Shay, Sec'y.

IRA A. CAMPBELL,
KERR & McCORD,

Proctor for Libellant.

United States of America, State of Washington, County of King.—ss.

A. B. Shay, being first duly sworn, on oath, deposes and says: That he is the secretary of the Independent Transportation Company, a corporation, and as such secretary is authorized to make this verification for and on behalf of said corporation, and does make this verification in that behalf; that he has read the foregoing Third Amended

Libel, knows the contents thereof, and believes the same to be true.

A. B. SHAY.

Subscribed and sworn to before me, this 24th day of March, 1910.

(N. S.)

IRA A. CAMPBELL,
Notary Public in and for the State of
Washington, residing at Seattle, Wash.

(Endorsed): Filed in the U. S. District Court Western Dist. of Washington April 22 1910 R. M. Hopkins Clerk.

In the United States District Court for the Western District of Washington, Northern Division In Admiralty.

Consolidated Case No. 3849—No. 3848

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Libellant,

vs.

THE YANG-TSZE INSURANCE ASSOCIATION, LIMITED, a corporation, Respondent.

ANSWER.

To the Honorable C. H. Hanford, Judge of the above entitled Court:

The Answer of The Yang-Tsze Insurance Association, Limited, a corporation, to the third amended libel of the Independent Transportation Company, in a cause of contract, civil and maritime, alleges as follows:

I.

It admits the allegations of the first article thereof.

II.

It admits the allegations of the second article thereof.

III.

It denies each and every allegation contained in the third article thereof, excepting the allegation that said steamer "Vashon" was an American vessel of 244 gross tons registered, official number 126766, which it admits.

IV.

It admits the allegations of the fourth article thereof.

V.

It admits that the said steamer "Vashon" sunk and by reason thereof became damaged as alleged in the fifth article thereof, and it denies each and every other allegation of said fifth article.

VI.

Answering the sixth article thereof, it denies that any surveyor of this respondent made any finding as to the condition of said steamer "Vashon"; it denies that any surveyor of this respondent made any recommendation as to said steamer; it denies that any survey of said steamer was made or completed by any surveyor of this respondent; it denies that any estimated cost of repairs was obtained by any surveyor of this respondent; all as therein alleged; and it denies any knowledge or information sufficient to form a belief as to each and every other allegation of said sixth article, and therefore denies the same, excepting the allegation that said steamer was, on or about January 11, 1908, floated, and on or about February 12, 1908, hauled out, which it admits.

VII.

It admits that this respondent, on or about the 28th of April, 1908, denied all liability under its aforesaid policy, but it denies each and every other allegation of the seventh article thereof.

VIII.

It admits that libellant requested this respondent's consent to a sale of said steamer, and in reply thereto respondent advised libellant, through the latter's aforesaid agents, that it, respondent, did not have any interest in said steamer and nothing whatever to say in response to said request, but it denies any knowledge or information sufficient to form a belief as to each and every other allegation of the eighth article thereof, and therefore denies the same.

IX.

It denies each and every allegation contained in the ninth article thereof, and denies that respondent is liable under its aforesaid policy, upon a basis of a partial loss, in the sum of \$2850.00, or in any sum whatever.

X.

It denies any knowledge or information sufficient to form a belief as to the allegations of the tenth article thereof (except as to those allegations in this tenth article denied), and therefore denies the same; and it denies that this respondent is liable to pay libellant under its policy the sum of \$846.12, or any sum whatever, by way of salvage charges and costs and the cost of making an adjustment of said loss, or at all.

And this respondent further answering said third amended libel, alleges:

XI.

That it is a corporation organized and existing under the laws of Hong Kong, a Crown Colony of the British Empire.

XII.

That on or about the 16th day of July 1907, this respondent issued to libellant its policy of insurance, No. 7/349, whereby, among other things, it insured three thousand dollars on account of libellant in case of loss, to be paid to libellant from the 3rd day of July 1907, at noon, San Francisco mean time, until the 3rd day of July 1908, at noon, San Francisco mean time, upon libellant's interest as owner in the body, machinery, tackle, apparel and other furniture of the steamer "Vashon", vessel valued at \$15,000, under the agreements and stipulations therein contained, as will more fully appear by reference to said policy, a copy of which has heretofore been filed herein, marked Exhibit No. 1, and is hereby referred to and by such reference made a part hereof; and whereby libellant, among other things, expressly warranted to respondent that, during the term of said policy, the said vessel would be and remain employed in the general passenger and freighting business on Puget Sound within a radius of thirty miles from Seattle.

XIII.

That on or about December 3, 1907, in violation of said express warranties of libellant, said steamer was by libellant removed from a dock in Seattle harbor, on Puget Sound, and towed to a point in the Duwamish River, in King County, State of Washington, and there moored to piling, laid up for the winter, out of commission, her master and crew discharged, and her care and safety entrusted to a river

boat houseman, living on the bank of the Duwamish River adjacent to where said steamer was so moored; and that thereafter, on or about December 15, 1907, and while said vessel was moored in said Duwamish River, laid up for the winter, out of commission, her master and crew discharged, and her care and safety entrusted to said river boat houseman, as aforesaid, said vessel filled with water and sank.

XIV.

That this respondent has no knowledge or information as to the extent of damages sustained by said steamer by reason of her sinking as aforesaid, and therefore demands proof of the same if material.

That all and singular the premises are true.

Wherefore, respondent prays that this Honorable Court would be pleased to pronounce against the third amended libel aforesaid, and to condemn libellant in costs and otherwise right and justice to administer in the premises.

YANG-TSZE INSURANCE ASSOCIATION, Ltd.,
Respondent.

WILLIAM H. GORHAM,
Proctor for Respondent.

United States of America, Western District of Washington,
—ss.

E. H. Hutchinson being first duly sworn, on oath says: That he is agent for respondent in the above entitled action; that he has heard the foregoing answer read, knows the contents thereof, and believes the same to be true.

E. H. HUTCHINSON.

Subscribed and sworn to before me this 29th day of March, A. D. 1910.

S. H. KELLERAN,

Notary Public in and for the State of Washington, residing at Seattle, Wash.

(Endorsed): Filed in the U. S. District Court, Western Dist. of Washington Mar 30, 1910 R M Hopkins, Clerk.

In the United States District Court for the Western District of Washington, Northern Division. In Admiralty.

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Libellant,

vs.

CANTON INSURANCE OFFICE, LIMITED, a corporation, Respondent.

Consolidated Case No. 3849.

No. 3849. Third Amended Libel in Personam.

To the Hon. C. H. Hanford, Judge of the above-entitled court:

The libel of the Independent Transportation Company, a corporation, libellant, against the Canton Insurance Office, Limited, a corporation, respondent, in a cause of contract, civil and maritime, alleges as follows:

I.

That libellant, the Independent Transportation Company, is a corporation organized and existing under and by virtue of the laws of the State of Washington, and having its principal place of business at Seattle, Washington.

II.

That libellant believes and therefore alleges, respondent, Canton Insurance Office, Limited, to be a corporation, and maintaining an agent within the jurisdiction of this court, but the country under the laws of which said corporation is organized is unknown to libellant, and it therefore demands strict proof of the same.

III.

That libellant was, during all times herein mentioned, and particularly from prior to July 3rd, 1907, to about August 13th, 1908, both inclusive, the sole owner of the Steamer "Vashon," an American vessel of 244 gross tons register, official number 126766.

IV.

That for and in consideration of the payment of the sum of Two Hundred and Twenty Dollars (\$220.00), by

libellant unto respondent, respondent insured, by its policy of insurance No. 117/10134, Four Thousand Dollars, (\$4,000.00) on account of libellant from the 3rd day of July, 1907, until the 3rd day of July, 1908, upon its interest as owner in the body, machinery, tackle, apparel and other furniture of said Steamer "Vashon," against the adventures and perils of the seas, fires, pirates, assailing thieves, jettisons, barratry of the marines (but not of the master), embezzlement and illicit trade, or any trade in articles contraband of war excepted in all cases; and all other losses and misfortunes that shall come to the hurt or damage of the vessel insured, or any part thereof, to which insurers are liable by the Rules and Customs of Insurance in San Francisco, including the Rules and adjustment of losses printed on the back of respondent's policy of insurance and the provisions of the Civil Code of California, excepting such losses and misfortunes as are excluded by said policy.

Said policy further provided: "In case of any loss or misfortune resulting from any peril insured against, the party insured hereby engages for himself or themselves, his or their factors, servants or assigns, to sue, labor and travel, and use all reasonable and proper means for the security, preservation, relief and recovery of the property insured, or any part thereof, * * *, to the charges whereof this company will contribute in proportion as the sum insured is to the whole sum at risk; nor shall the acts of the insured or insurers in recovering, saving and preserving the property insured, in case of disaster, be considered a waiver of an acceptance of abandonment."

V.

That, thereafter, while properly and securely moored on the evening of the 15th day of December, 1908, said Steamer "Vashon" sunk and by reason thereof became damaged, and libellant, as owner of said steamer, suffered losses and incurred expenses in laboring to save and preserve said steamer, as hereinafter set forth.

VI.

That immediately after said steamer sunk, operations were commenced to save and preserve the same, and she was on the 11th day of January, 1908, floated and moored; that upon the raising of said steamer, she was found by

the surveyors to be in such a filthy condition with fule oil and mud that it was impossible to ascertain the extent of damages, and they, therefore, recommended that said steamer be hauled out of the water, strakes of planking cut from her bottom and all dirt washed out, in order that a survey in detail might be made.

That pursuant to such recommendations, said steamer was, as soon as possible, on the 12th day of February, 1908, hauled out and was thereafter, with all due diligence opened up and cleaned for the purpose of making a detailed survey of said damage and of securing an estimated cost of repairs, which survey was, with all due diligence, completed by Messrs. Frank Walker and Capt. S. B. Gibbs, surveyor of respondent Insurance Company, on the 15th day of April, 1908, and the estimated cost of repairs obtained.

VII.

That libellant, on April 20th, 1908, by its agents Johnson & Higgins, served upon respondent due and regular proofs of said loss, as in such cases required, and thereafter, on April 25th, 1908, respondent advised libellant, through the latter's aforesaid agents, that respondent denied all liability under it's aforesaid policy.

VIII.

That, thereafter, libellant, ascertaining that said steamer would not be worth repairing and was continually deteriorating, and deeming that the sale of said steamer would be for the best interests of all concerned, and what a prudent uninsured owner would do, requested respondent's consent to such sale, and in reply thereto, respondent advised libellant through the latter's aforesaid agents, that it, respondent, did not have any interest in said steamer and nothing whatever to say in response to said request; and, thereupon, on or about the 13th day of August, 1908, libellant sold said steamer for the best and highest price obtainable therefor, to-wit: the sum of Seven Hundred and Fifty Dollars (\$750.00).

IX.

That the sound value of said steamer at the time of said loss was the sum of Fifteen Thousand Dollars (\$15,000.00), and in her damaged condition the sum of Seven Hundred and Fifty Dollars (\$750.00), and the depreciation in value

of said vessel and loss to libellant, by reason of the damaging of said vessel was the sum of Fourteen Thousand Two Hundred and Fifty Dollars (\$14,250.00); that respondent's proportion of said loss for which it is liable under it's aforesaid policy upon the basis of a partial loss is the sum of Three Thousand Eight Hundred Dollars (\$3,800.00).

X.

That libellant incurred in laboring to save and preserve said steamer by way of salvage charges and costs and the cost of making an adjustment of said loss, the sum of Four Thousand Two Hundred Thirty and 60/100 Dollars (\$4,230.60), of which respondent is liable to pay unto libellant under it's policy the sum of One Thousand One Hundred Twenty-eight and 16/100 Dollars (\$1,128.16).

XI.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE libellant prays that a citation in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said respondent and it be cited to appear and answer upon oath all and singular the matters so articulately propounded; and that this Honorable Court may be pleased to decree the payment of the amount due, with interest and costs; and that libellant may have such other and further relief as in law and justice it is entitled to receive.

INDEPENDENT TRANSPORTATION COMPANY,
By A. B. Shay, Sec'y.

IRA A. CAMPBELL,
KERR & McCORD,
Proctors for Libellant.

United States of America, State of Washington, County of King.—ss.

A. B. Shay, being first duly sworn, on oath, deposes and says: That he is the Secretary of the Independent Transportation Company, a corporation, and as such Secretary is authorized to make this verification for and on behalf of said

corporation, and does make this verification in that behalf; that he has read the foregoing Third Amended Libel, knows the contents thereof, and believes the same to be true.

A. B. SHAY.

Subscribed and sworn to before me this 24th day of March, 1910.

(N. S.)

IRA A CAMPBELL,
Notary Public in and for the State of
Washington, residing at Seattle, Wash.

(Endorsed): Filed in the U. S. District Court, Western Dist. of Washington, Apr. 22, 1910. R. M. Hopkins, Clerk.

In the United States District Court for the Western District of Washington, Northern Division. In Admiralty.

Consolidated Case No. 3849.

No. 3849. Answer.

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Libellant,

vs.

CANTON INSURANCE OFFICE, LIMITED, a corporation, Respondent.

To the Honorable C. H. Hanford, Judge of the above entitled Court:

The Answer of the Canton Insurance Office, Limited, a corporation, to the third amended libel of the Independent Transportation Company, in a cause of contract, civil and maritime, alleges as follows:

I.

It admits the allegations of the first article thereof.

II.

It admits the allegations of the second article thereof.

III.

It denies each and every allegation contained in the third article thereof, excepting the allegation that said

steamer "Vashon" was an American vessel of 244 gross tons registered, official number 126766, which it admits.

IV.

It admits the allegations of the fourth article thereof.

V.

It admits that the said steamer "Vashon" sunk and by reason thereof became damaged as alleged in the fifth article thereof, and it denies each and every other allegation of said fifth article.

VI.

Answering the sixth article thereof, it denies that any surveyor of this respondent made any finding as to the condition of said steamer "Vashon;" it denies that any surveyor of this respondent made any recommendation as to said steamer; it denies that any survey of said steamer was made or completed by any surveyor of this respondent; it denies that any estimated cost of repairs was obtained by any surveyor of this respondent; all as therein alleged; and it denies any knowledge or information sufficient to form a belief as to each and every other allegation of said sixth article, and therefore denies the same, excepting the allegations that said steamer was, on or about January, 11, 1908, floated, and on or about February 12, 1908, hauled out, which it admits.

VII.

It admits that this respondent, on or about the 28th of April, 1908, denied all liability under its aforesaid policy, but it denies each and every other allegation of the seventh article thereof.

VIII.

It admits that libellant requested this respondent's consent to a sale of said steamer, and in reply thereto respondent advised libellant, through the latter's aforesaid agents, that it, respondent, did not have any interest in said steamer and nothing whatever to say in response to said request, but it denies any knowledge or information sufficient to form a belief as to each and every other allegation of the eighth article thereof, and therefore denies the same.

IX.

It denies each and every allegation contained in the ninth article thereof, and denies that respondent is liable under its aforesaid policy, upon a basis of a partial loss in the sum of \$3800.00, or in any sum whatever.

X.

It denies any knowledge or information sufficient to form a belief as to the allegations of the tenth article thereof (except as to those allegations in this tenth article denied), and therefore denies the same; and it denies that this respondent is liable to pay libellant under its policy the sum of \$1128.16, or any sum whatever, by way of salvage charges and costs and cost of making an adjustment of said loss, or at all.

And this respondent further answering said third amended libel, alleges:

XI.

That it is a corporation organized and existing under the laws of Hong Kong, a Crown Colony of the British Empire.

XII.

That on the 3rd day of July 1907, this respondent issued to libellant its policy of insurance, No. 117/10134, whereby among other things, it insured four thousand dollars on account of libellant in case of loss, to be paid to libellant from the 3rd day of July 1907, at noon, San Francisco mean time, until the 3rd day of July, 1908, at noon San Francisco mean time, upon libellant's interest as owner in the body, machinery, tackle, apparel and other furniture of the steamer "Vashon," vessel valued at \$15,000 under the agreements and stipulations therein contained, as will more fully appear by reference to said policy, a copy of which has heretofore been filed herein, marked Exhibit No. 1, and is hereby referred to and by such reference made a part hereof; and whereby libellant, among other things, expressly warranted to respondent that, during the term of said policy, the said vessel would be and remain employed in the general passenger and freighting business on Puget Sound within a radius of thirty miles from Seattle.

XIII.

That on or about December 3, 1907, in violation of said express warranties of libellant, said steamer was by

libellant removed from a dock in Seattle harbor, on Puget Sound, and towed to a point in the Duwamish River, in King County, State of Washington, and there moored to piling, laid up for the winter, out of commission, her master and crew discharged, and her care and safety entrusted to a river boat houseman, living on the bank of the Duwamish River adjacent to where said steamer was so moored; and that thereafter, on or about December 15, 1907, and while said vessel was moored in said Duwamish River, laid up for the winter, out of commission, her master and crew discharged, and her care and safety entrusted to said river boat houseman, as aforesaid, said vessel filled with water and sank.

XIV.

That this respondent has no knowledge or information as to the extent of damages sustained by said steamer by reason of her sinking as aforesaid, and therefore demands proof of the same if material.

That all and singular the premises are true.

Wherefore, respondent prays that this Honorable Court would be pleased to pronounce against the third amended libel aforesaid, and to condemn libellant in costs and otherwise right and justice to administer in the premises.

CANTON INSURANCE OFFICE, Limited.
Respondent.

WILLIAM H. GORHAM,
Proctor for Respondent.

United States of America, Western District of Washington.
—ss.

J. R. Mason, being first duly sworn, on oath says: That he is agent for respondent in the above entitled action; that he has heard the foregoing answer read, knows the contents thereof, and believes the same to be true.

J. R. MASON.

Subscribed and sworn to before me this 29th day of March, A. D. 1910.

EARL E. RICHARDS,
Notary Public in and for the State of Washington, residing
at Seattle, Wash.

(Endorsed): Filed in the U. S. District Court, Western Dist. of Washington, Mar. 30, 1910. R. M. Hopkins, Clerk.

United States District Court, Western District of Washington,
Northern Division.

No. 3849. Filed Oct. 16, 1910.

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Libelant,

vs.

CANTON INSURANCE OFFICE, LIMITED, a corporation, Respondent.

Memorandum Decision on Exceptions and Exceptive Allegations to the Several Libels as Amended.

These several suits are founded upon policies insuring the steamer Vashon. The policies were issued at Seattle, they contain the usual restrictions in the San Francisco form of marine policies, and the following special warranty clause:

“Vessel warranted employed in the general passenger and freighting business on Puget Sound within a radius of 30 miles from Seattle, Warranted no lime under deck.”

The first exception is on the ground of alleged insufficiency of the libels in the failure to allege compliance on the part of the insured with the requirements of express warranties in the policies, the contention being that the libelant should assume the burden of alleging and proving that there was no breach of the warranties. This is contrary to the fundamental principle that courts do not presume that a contract has been broken, nor require a litigant to prove a negative. Therefore, notwithstanding the authorities the Court holds that a breach of warranty should be pleaded as a special defense in order to present that issue in the best form for adjudication.

The first exception is over-ruled.

The respondents have introduced and made part of the record in the case, the notice of abandonment of the vessel and proof of loss whereby it appears that the Vashon at the time of the disaster which occasioned the loss, was out of commission and moored in the Duwamish River, and it is contended that as she was not then employed in the general passenger and freighting business on Puget Sound, there was a breach of the special warranty which avoided

liability under the terms of the policies. The respondents contend for the principle that insurers are entitled to insist upon strict and literal compliance with special warranties and deny the right of the libelant to introduce parol evidence to explain or vary the terms of the warranty clauses. This argument recoils, for application of a rigorous rule defeats the purpose for which it has been invoked in these cases. Unless the rules of grammar shall be disregarded, or the phraseology of the warranty changed by a somewhat liberal construction, there is no apparent breach. It is not pretended that the record shows that the Vashon was not employed in the general passenger and freighting business on Puget Sound when the policy was issued. The word "employed" is a verb of the past or present tense and cannot be accurately used potentially to indicate future action unless qualified by additional words not found in these warranty clauses. The argument for the respondents assumes that the warranties relate to future employment of the vessel during the life of the policies and that the clauses should be interpreted to read—vessel warranted to be employed in the general passenger and freighting business on Puget Sound. The interpolation of the words "to be" would materially change the meaning of the clause and it is not permissible to thus interpolate in order to change the meaning of a contract which courts are required to enforce strictly according to the terms assented to by the parties.

The second exception is over-ruled.

The third exception is for alleged failure to allege a valid notice of abandonment on which to base the claim for a constructive total loss. The written notice which was served is criticised on the ground that it failed to specify that the vessel suffered a mishap while employed on the water of Puget Sound. For reasons stated this ground of objection is untenable. The only other criticism of the notice is, that it failed to assign a reason for abandonment of the vessel. The notice states that the vessel sank in the Duwamish River and that acting under the advice of Captain Gibbs, the Underwriter's surveyor, "the owners raised her and placed her on the flats in the lower part of the city, but notwithstanding these efforts she is still badly damaged and her owners consider her a constructive total loss." There is no contention that these statements were untrue, and being true they amount to specifications of a valid reason for abandonment.

The third exception is over-ruled.

The fourth exception is for alleged waiver of the right to abandon by excessive delay without any valid excuse. It appears from the record that the vessel sank on the 15th of December and the owner had notice of the happening on the 16th. The notice of abandonment was given four months thereafter, which was three months after the vessel had been raised and two months after she had been cleaned so as to be in condition for inspection and survey of damages.

For cogent reasons the insured party is required to act promptly in giving notice of abandonment when it is intended to claim for a constructive total loss, and without reasons justifying delay for the period which elapsed in this instance, the insurers have justice on their side in claiming that the right to abandon was waived.

The fourth exception is sustained by the Court.

If the libelant claims that there was any justifiable excuse for delay, leave will be granted to further amend the libel to show the facts.

C. H. HANFORD,
Judge.

Endorsed): Filed in the U. S. District Court, Western Dist. of Washington, Oct. 16, 1909. R. M. Hopkins, Clerk.

In the District Court of the United States for the Western District of Washington, Northern Division,

In Admiralty.

No. 3849. Stipulation.

INDEPENDANT TRANSPORTATION COMPANY, a corporation,

vs.

CANTON INSURANCE OFFICE, LIMITED, a corporation, Respondent.

It is stipulated and agreed between libellant and respondent that Paragraph V of the third amended libel in each of the consolidated causes herein shall be deemed amended to read as follows:

That the said Steamer "Vashon" was securely moored within the tidal waters within and near the mouth of the

Duwamish River, which empties into Elliot Bay on or about the — day of December, 1907, without notice to respondent that she had been laid up and that no return premium for said laying up had been demanded from respondent or received by libellant, and while so laid up said vessel was by well known and well established custom,—(which custom was fully recognized as such among underwriters on the Pacific Coast of the United States, particularly at the ports of San Francisco and Puget Sound by virtue of which said custom and under the San Francisco hull time policy) the said vessel was deemed to be and was in fact covered by such policies of insurance and by the policies issued by the respondent herein during the period said vessel was so laid up, no return premium having been demanded therefor.

That thereafter while so properly and securely moored on the evening of the 15th day of December, 1909 the said Steamer "Vashon" sunk and by reason thereof became damaged and that libellant as owner of said steamer suffered a loss and incurred expenses for labor to save and preserve said steamer, as hereinafter set forth.

IRA A. CAMPBELL,

KERR & McCORD,

Proctors for Libellant.

WILLIAM H. GORHAM,

Proctor for Respondent.

(Endorsed): Filed in the U. S. District Court, Western
Dist. of Washington,, 19..... R. M.
Hopkins, Clerk.

In the United States District Court for the Western District
of Washington, Northern Division. In Admiralty.

No. 3848.

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Li-
bellant.

vs.

THE YANG-TSZE INSURANCE ASSOCIATION, LIMITED, a corpora-
tion, Respondent.

No. 3849.

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Li-
bellant.

vs.

CANTON INSURANCE OFFICE, LIMITED, a corporation, Res-
pondent.

No. 3858.

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Li-
bellant.

vs.

CHINA TRADERS INSURANCE COMPANY, LIMITED, a corpora-
tion, Respondent.

Upon motion of Respondents.

It Is Ordered that the above causes be referred to A.
C. Bowman, Esquire, Commissioner of the above entitled
court, to take testimony in said cause and report the same
to this Court.

Dated Seattle Washington, April 18, 1910.

O. K. Campbell

C. H. HANFORD,
Judge.

(Endorsed): Filed in the U. S. District Court, Western
Dist. of Washington, Apr. 18, 1910. R. M. Hopkins, Clerk.

In the District Court of the United States for the Western District of Washington, Northern Division.

(No. 3848) (Consolidated with Cause No. 3849)

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Libellant.

vs.

THE YANG-TSZE INSURANCE ASSOCIATION, LIMITED, a corporation, Respondent.

(No. 3849)

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Libellant.

vs.

CANTON INSURANCE OFFICE, LIMITED, a corporation, Respondent.

(No. 3858) (Consolidated with case No. 3849)

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Libellant.

vs.

THE CHINA TRADERS INSURANCE COMPANY, a corporation, Respondent.

To the Honorable Judges of the above entitled Court:

Pursuant to the order of reference herein dated April 18, 1910, the respective parties appeared before me on the dates shown in the following record:

Mr. Kerr of Kerr & McCord, appearing for Libellant, and Mr. Wm. H. Gorham, appearing for Respondents.

Thursday Morning Session, November 10, 1910.

MR. GORHAM. It is stipulated by and between the parties to the above entitled causes that the testimony to be taken in either or any of said causes may be considered as testimony taken in all of said causes so far as the same is applicable to the issues thereof.

CHARLES H. HAMILTON, having been first duly sworn, testified as follows on behalf of the Libellant.

DIRECT EXAMINATION,

BY MR. KERR.

Q State your full name to the Court?

A Charles H. Hamilton.

Q What is your occupation?

A Steamship business.

Q What relation did you sustain in the month of December, 1907, to the Independent Transportation Company?

A I was Vice President.

Q I call your attention to an instrument in writing purporting to be a bill of sale of the steamer or vessel "Vashon;" I will have it marked Libellant's Exhibit "A" and ask you to state whether that is the bill of sale to the Independent Transportation Company for that vessel, the original bill of sale?

A Yes, sir, that is the original bill of sale, or at least a certified copy of it, I don't know which. Come to think about it, it looks like it is a certified copy. I ain't sure which.

Q I didn't notice it. Will you let me examine it.

A It is a true copy of the original bill of sale.

Q Certified copy?

A Certified copy, certified by the collector of customs.

Q Was the original one filed over there?

A I won't be certain whether the original is on file in the custom house or whether it is in our office.

MR. GORHAM. Whose office do you mean by "our office?"

A Independent Transportation Company. You see the certificate on the back of it.

MR. KERR. A certified copy is admissible.

Q Do you remember at about what date the Independent Transportation Company conveyed the title to that vessel?

A Why, I think it was along in August, 1907.

Q 1907 or 1908?

A 1908 rather.

MR. GORHAM. Conveyed to whom?

MR. KERR. Conveyed to the American Iron and Metal Company.

MR. KERR. I desire to have this paper marked "certificate of ownership Steamer Vashon" purporting to be a certificate of ownership issued by the deputy collector at Port Townsend under date of October 1st, marked Libellant's Exhibit "B" for identification.

Q What company was the owner of the vessel Vashon at the time she sunk in the Duwamish River about the 16th of December, 1908?

A The Independent Transportation Company.

MR. GORHAM. We object to that question as calling for the conclusion of the witness.

MR. KERR. I now offer in evidence the Libellant's identified Exhibit "A," being the certified copy of the bill of sale of the steamer Vashon, purporting to have been certified—

MR. GORHAM. We have no objection to Exhibit "A."

Mr. KERR. The Libellant now offers in evidence the identified Exhibit "B," purporting to be the certificate of ownership of the vessel, issued by the Department of Commerce and Labor, Bureau of Navigation, under date of October 31, 1910.

MR. GORHAM. We object to Exhibit "B" for identification as an exhibit and as evidence, on the ground that it contains merely a recital of the Collector of the Port as to his conclusions of what the record is, and does not purport to be a certified copy of the record itself, and therefore is not the best evidence of what the record is and is incompetent.

MR. KERR. For the purpose of further meeting the objection I desire to ask the witness the following questions:

Q Was there any conveyance made by the Independent Transportation Company of this vessel between the date when the title was acquired, as shown by Exhibit "A," and

the date when the bill of sale, under date of August 17, 1908, was executed to the American Iron and Metal Company, as shown in Exhibit "B?"

MR. GORHAM. I object as incompetent, irrelevant and immaterial, as to whether there was a conveyance or not. The title can pass without a conveyance.

Q Did the ownership of said vessel remain in the Independent Transfer Company between the date of the original bill of sale, the Libellant's Exhibit "A," and the date of the transfer to the American Iron and Metal Company, under date of August 17, 1900?

MR. GORHAM. We object as calling for the conclusion of the witness.

A You asked the question if the title did pass, or if the sale was made?

Q I asked you the question whether the title to the Vashon remained in the Independent Transportation Company, the Libellant, from the date when it acquired the title, as shown in Exhibit "A," to the date when it conveyed the title, under date of August 17, 1908, to the American Iron and Metal Company?

A Yes, it did.

MR. KERR. That's all I care to ask Mr. Hamilton at this time. I will recall him and you may cross examine him at length.

MR. GORHAM. I will reserve my cross examination.

CAPTAIN STEPHEN B. GIBBS, having been first duly sworn, testified as follows on behalf of the Libellant.

DIRECT EXAMINATION.

BY MR. KERR.

Q State your full name to the Court?

A Stephen B. Gibbs.

Q In what business were you engaged on December 16, 1907, and what business are you still engaged in?

A I was agent and surveyor for the San Francisco Board of Underwriters.

Q How long have you been acting as surveyor for the San Francisco Board of Underwriters?

A Eight and a half years.

Q To what extent have you represented that organization where the services of a marine surveyor were required at the Port of Seattle?

A I always acted for them when I have been asked to do so from San Francisco or by the owners of the various vessels here in Seattle.

Q Did your duties extend to this port or to the various ports of Puget Sound?

A Various ports.

Q When a loss has occurred on a vessel covered by insurance, is it your custom to await specific instructions from the Board of Underwriters, or do you act for them in these matters without any specific request in each instance?

A Why, I usually wait until I hear, act upon the instructions from the owners or from the underwriters.

Q Do you remember the occasion when the steamer Vashon that is in controversy in this litigation was sunk in the Duwamish River?

A I do.

Q Do you remember about the date, Captain Gibbs?

A Well, I will have to refer to my surveyor report, December, 1907.

Q I call your attention to what purports to be a surveyor's report of the steamer Vashon, purporting to be your signature, which I will have marked for identification Libellant's Exhibit "C," and ask you if you can, by reference to that, refresh your memory and state the date.

MR. GORHAM. What is "C?"

MR. KERR. Surveyor's report.

MR. GORHAM. His report?

MR. KERR. His report.

MR. GORHAM. His original?

MR. KERR. His original report.

MR. GORHAM. Yes, that is all right.

A December 16, 1907.

Q Do you know how long, prior to the time you say here, she was sunk in the river?

A I have here data—the day after she sunk, to the best of my recollection.

Q Who was with you?

A Mr. Stilbeck and Mr. Walker.

Q At whose request did you go out to examine her?

A The request of Mr. Hamilton.

Q Mr. Hamilton who has just testified?

A Yes sir.

Q When you arrived at the place where the vessel sunk, in what condition did you find her?

A Her bow was out in the river, submerged, her stern was up on the bank, the vessel was well up over her main deck.

Q Did you notice the manner in which the vessel was moored?

A I didn't notice it particularly. The moorings were cast astern evidently, the bow seemingly allowing the stern to swing out into the river.

Q Were any of her moorings still attached?

A Yes, one line that was fast—two lines, I think, was fast to the bow. I don't remember exactly.

Q What, if anything, did you do at that time with reference to this vessel; is it all shown in your report?

A All shown by the surveyor report.

Q Does that report correctly represent the condition of the vessel at the time you first observed her, and what was done under your direction in connection with her up to the time that survey was made?

A It does.

Q I call your attention to Exhibit "C"; I will ask you whose signatures are attached to it?

A My signature and Mr. Walker's.

Q That is one of the original surveys?

A Yes.

Q And do you remember at what date that survey was made?

A I would have to refer to the report.

Q Refer to the report?

A This is dated December 16, 1907. April 15, 1908.

Q Is the later date the date when the survey was completed and the report made?

A Yes.

Q What did you find it necessary to do when you visited the vessel and found her in the condition you have described?

A I didn't understand you.

Q What did you find it necessary to do with her?

A Why, Mr. Walker and myself agreed the only way to do was to raise the vessel.

Q What was the stage of the tide at the time you first visited the vessel?

A I don't remember the exact stage of the tide. I should say it was—I should say a long tide.

Q And what is, in your judgment, the rise and fall of the tide at the place where she was moored?

A I don't remember exactly. I should say it was somewhere about six or eight feet, possibly more.

Q To what extent had the vessel been submerged prior to the time you visited her?

A The water had been up well over her cabins.

Q Now, what steps were taken, and under whose direction, to raise this vessel, after your visit of the 16th of December?

A Why, Mr. Walker and myself agreed it was the best

thing to get Captain Genero and Mr. Finch to go out there and raise the vessel, as we outlined in our survey report.

Q Was she raised under your supervision and that of Mr. Walker?

A Yes; we didn't take an active part in it, only to agree to the plans for raising the vessel.

Q Was the raising of the vessel a matter of difficulty or otherwise?

A Yes, it was raised with considerable difficulty. It was a very bad place to work.

Q Do you remember just what was done—about what length of time was required to raise her?

MR. GORHAM. If he knows of his own personal knowledge what was done.

A Pretty hard work to remember just the length of time it took. I think it was about ten days.

Q I think I had better start in now and identify these vouchers by calling your attention to them. We can probably get at both the extent of time—

A It was longer than that. I guess they run it—I guess they run it fifteen or twenty days.

MR. GORHAM. Wasn't it thirty days?

A It might have been. I don't remember just at the present time, just what time. The survey report would show probably. It was longer than what I thought.

Q I want to call your attention to certain vouchers I will later have identified, being the expense vouchers for the raising and docking and work on this vessel preliminary to your final survey, for the purpose of refreshing your recollection as to dates and time that the work was done?

A Of course the survey report shows. If I had looked at that I would have seen it took more than twenty days. It took several days to outline the proposition you see for raising the vessel, and getting started.

Q I will call your attention to a voucher which I have marked on the margin "Exhibit D-1," purporting to

be the pay roll of Schubach and Hamilton, account salvage Steamer Vashon, which voucher indicates the number of days of labor performed on the vessel in December and January, with the receipts of the various parties performing that labor, and in connection with that voucher and your report, would you be able to state about the date when the vessel was floated?

A The survey report states exactly the date it was reported. I would have to refer to that.

Q You would—

MR. GORHAM. I think we can agree on these items of expense. I took those dates from your records. The vessel sunk on the 15th, was floated and moored on the 11th of January.

Q Possibly I can get those dates without going into detail. On January 11th the vessel was floated. Between the 16th of December and January 11th, I wish you would state to the Court with what degree of diligence the work of raising the vessel was prosecuted?

A It was carried on with all the diligence possible. It as a difficult job to raise the vessel, required lots of time. Piles had to be driven; the tide run there very strong. The gear carried away there once or twice and delayed operations.

Q After the vessel was floated what did you find necessary to be done with it before a survey could be made?

A Necessary to haul the vessel out so she could be examined.

Q What arrangements and when were the arrangements made? You can refer again to your surveyor's report to refresh your recollection. Were arrangements made for the docking or taking out of the vessel preliminary to a survey?

A Yes, there was.

Q Do you remember at what time that arrangement was perfected or what was done preliminary to the making of that arrangement?

A Why, Mr. Walker and I discussed—all of us, I think, discussed the situation, and we—I think we tried King and Wing's to see what could be done there, and then

we tried Mr. Sloan and his proposition was the most reasonable so we—there was a contract made with Sloan Brothers to haul the vessel out.

Q Were you able either on account of expense or otherwise, to find a dock upon which this vessel could be moored, or was it necessary to make some special arrangement for getting her out on account of the length of time it would consume in making repairs or making a survey?

A We didn't think it was advisable to put the vessel on a dry dock on account of the expense and length of time she would probably be on the dock.

Q What was there about the condition of the vessel, as you observed her after she had been raised, that indicated to you the time the vessel must necessarily remain on the dock, if she was put on the dock, would make the expense prohibitive; what was there in the vessel's condition?

A I think that—I think we figured at the time, there might be some delay over the repairs of the vessel for certain reasons

Q Do you know what kind of fuel she burned?

A Burned oil fuel.

Q After she sunk did the oil escape in any way and defoul the vessel?

A Yes, she was covered with oil; everything was covered, saturated with oil.

Q After you made this contract with Captain Sloan to dock the vessel or haul her out, was there any delay in getting her out of the water, and if so, what was the occasion of it?

A Yes, it took him a long time to lay his ways and get ready to haul the vessel out. He carried away a great deal of his gear in trying to pull her out. He went to work in the wrong way. After he notified us she was ready to survey, we went down there and found her stern was still in the water, so we couldn't—

Q I understand you had to construct marine—

MR. GORHAM: I don't think you ought to lead the witness.

Q What did Captain Sloan have to do, if anything, preliminary to hauling the vessel out of the water?

A He had to build his ways, and erect his approaches, tackles, etc.

Q Was Captain Sloan, in your judgment, a competent person to haul that vessel out of the water?

A Yes, I thought he was at the time.

Q Now, when you examined the vessel, as I understand you, after Captain Sloan had started to haul her out, you found her only partially out of the water?

A Only partially out of the water.

Q To what extent was the vessel—what part of the vessel was submerged?

A The aft end of the vessel was still in the water.

Q Was it possible or practical to make a survey of that vessel in that condition?

A It was not.

Q Did Captain Sloan prosecute diligently the work of hauling her up to that position in the first instance and in getting her out so that the survey could be made?

A Well, it appeared to me as though he took a great deal longer time than was necessary to do it.

Q What effort, if any, did you make to hasten that work, in that you supplied anything, or what did you do?

A We simply told him, we didn't like to interfere with his plans for hauling the vessel out, as it was a contract job. It was evident to us he went to work the wrong way, used up a good deal of time and money. He lost a good deal of money.

Q What I am getting at, were you endeavoring to have him complete his work, or not?

A Yes, we told him we would like to have him hurry up on the job.

Q At what time did you find the vessel stuck on the waves, do you remember? Does your report show?

A No, I don't think my report shows that.

Q At what time did he finally get the vessel out of the water so that a survey was possible?

A For that I would have to refer to this report. The report is dated April 15th.

Q How long prior to the date when you made the survey had the vessel been hauled out of the water so that you could survey it?

A I think we made the survey just as soon as she was out in a condition so that we could go through it. That is the best of my recollection.

Q Do you remember of being down there with Mr. Walker and Captain Genero at the time she was stuck on the waves, when Captain Genero took a lantern and was about to enter her hold?

A Yes, I think I do recollect.

Q Was or was not the oil, fuel of the vessel, in the hold?

A It was.

Q Was there any gas from it in the hold?

A That we were unable to determine, but there was liable to be gas from it.

Q Was it practical or was it safe, in your judgment, to attempt to have surveyed her at that time or to have entered her hold for the purpose of making the survey?

A It was not.

Q Now, when Captain Sloan got her out on the waves, what was done in reference to her planking, if anything, preliminary to making the survey, what was done?

A We recommended the two planks be taken out of the bottom and the inside of the vessel be cleaned out, washed, so we could go through her.

Q For what reasons did you require that to be done?

A Because we considered it dangerous to go through the hold with the planking so full of oil.

Q Was there any time lost, in your judgment, from the time this vessel was sunk and you started in to raise her, until the time this survey was made, in enabling you

to arrive at the condition of the vessel and make a survey and report on it?

MR. GORHAM. We object as cross examining his own witness. The witness has already testified there was considerable delay and time lost by the contractors on account of their incompetency.

MR. KERR. No, he didn't.

MR. GORHAM. He did testify it. Leave it to the record.

Q Now, Captain, in your own way, I simply want the truth about the matter, as you understand it?

A No time lost as far as Mr. Walker and myself were concerned.

MR. GORHAM. We move to strike out the answer of the witness as not responsive to the question.

Q Did you let a contract to Captain Sloan to raise the vessel?

A The owners let a contract to Mr. Sloan to pull the vessel out.

Q I understand you to say you and Mr. Walker had personally negotiated for a place in which the vessel could be pulled out with King and Wing as well as Captain Sloan?

A Yes, but we were—we didn't make any contracts. We simply made the recommendation.

Q You were cognizant that a contract had been let to Mr. Sloan?

A Yes.

Q That was satisfactory to you as surveyor?

A Yes sir, it was.

Q The owners of this vessel, were the owners of this vessel, to your knowledge, guilty of any delay, or responsible in any way for any delay of the contractor, Sloan, in getting this vessel out so she could be surveyed?

MR. GORHAM. We object, as calling for the conclusion of the witness. He can state the facts.

A Not so far as I know.

Q After this planking had been removed, as I understand your testimony, you at once made this survey?

A As near as I can recall, we did.

Q This Exhibit "C," the original of your survey, was delivered to the libellant?

A It was.

Q During the time that elapsed from your first examination of this vessel and your final survey, were you in conference at any time with either J. M. E. Atkinson and Company or Mr. Tomlinson, representing that company, by whom the policy of the Yang Tsze Insurance Associations and the China Traders were issued, and Harris & Company, or Mr. J. R. Mason, the agent by whom the Canton Insurance policy was issued?

A I think they were in the office several times. I wasn't in consultation with them. We only discussed—told them what we were doing, that was all.

Q Did they have knowledge you were making this survey or taking the preliminary steps to make it?

A They knew I was making it.

Q Did you make a disposition of this vessel subsequent to the time when she was raised, did you sell her, dispose of her?

A No.

Q Did you conduct any negotiations for the sale of the vessel after you had made the survey?

A After we made the survey, after she was raised.

Q That is after she was raised?

A Yes, I tried to see if we could get an offer for the vessel.

Q During what length of time did you attempt to negotiate the sale of this vessel, do you remember?

A I don't know just the length of time.

Q In attempting to negotiate the sale of the vessel, were you acting for the members of the San Francisco Board of Underwriters.

A I was acting for the interest of all concerned.

Q Did you have any communication at all with the San Francisco Board of Underwriters with reference to this vessel from the time you first saw her to the time the ultimate survey was made?

A I wrote them, kept them posted just what was going on. I received no instructions from them.

Q You informed them what was going on?

A Just informed them as I do in all cases.

Q Was that the course you usually took in these matters?

A Yes.

Q Same course?

A Yes.

Q Was there any understanding at all or agreement between the owners and the underwriters, by which you were authorized to make a sale of the vessel in her damaged condition?

A I think there was.

Q She was ultimately sold, was she not?

A She was.

Q For \$750?

A She was.

Q Did you examine at the time these expense vouchers, aggregating something over \$3000., covering the cost of raising this vessel and the work that was done preliminary to the survey?

A I did.

Q These items of cost represented by these vouchers that bear the approval of your office and they are a reasonable cost for that work. I don't know there is any controversy over it?

A None that I know of.

Q At the time you first visited the vessel, did you observe whether any anchors were out?

A I think there was an anchor out forward, yes.

Q About how far above the Spokane Bridge on Spokane Avenue was this vessel moored, in a direct line?

A I don't remember just how far it was. It was a short distance above the boat house there, I should say about one hundred yards above the boat house, but I didn't take notice how far it was above the bridge.

Q On which side of the river was she moored, do you remember?

A On the right hand side of the river.

Q Looking up?

A Yes.

Q That would be south side of the river, would it not?

A Yes.

Q Did you observe any hawsers attached to the piling to the rear of the vessel or forward?

A Yes, I saw a hawser attached.

Q Which end of the vessel was up on the bank?

A The stern.

Q Down by the head?

A Yes, down by the head.

Q Up to the time you made this final survey, was it possible or practical to have made a final survey to ascertain the extent of the injuries to this vessel?

A No, I don't think it was.

MR. KERR. I will now offer in evidence the Libellant's identified Exhibit "C," being the original survey.

CROSS EXAMINATION.

BY MR. GORMAN.

MR. GORHAM. We desire to ask the witness some questions touching Exhibit "C", before we determine whether we will object to the same on any grounds.

Q This exhibit, Mr. Gibbs, recites at the beginning that at the request of the owners, the undersigned held the

survey on December 16, 1907. Your signature is subscribed to the exhibit. Were you acting on December 16th for the owners solely?

A We are usually called upon by the owners on all cases of this kind, and I was acting at that time at the request of the owners. I didn't know just where the insurance was placed.

Q You didn't know the underwriters of San Francisco were interested or not?

A To the best of my recollection, at the time they called on me, I didn't know who was interested.

Q You, being a marine surveyor, was willing to act in a surveying capacity at the request of the owner?

A I was.

Q You had no instructions from the Underwriters at that time to act for them?

A No.

Q Before you make a survey for the Underwriters, you await instructions from them, do you not?

A We usually are called upon by the owners, who know that our—We are usually called upon by the owners or adjusters. I am usually called on by owners or adjusters to make the survey.

Q That is an independent survey, isn't it? You, as a marine surveyor, do the surveying for them as an independent survey?

A Not always.

Q In a case where you are requested by the owners and adjusters?

A I don't know just exactly what you mean by independent survey.

Q You don't attempt to bind the Underwriters of San Francisco, whose agent you are at sometimes, when you are called upon to go and survey a vessel at the request of the owners?

A No.

Q You didn't in this instance, did you?

A No.

Q As a matter of fact you are surveyor to the San Francisco Board of Marine Underwriters and act for them?

A I do.

Q When requested?

A I do.

Q Mr. Sloan has been referred to by counsel as Captain Sloan. Mr. Sloan is not a seafaring man, is he?

A I don't think he is.

MR. KERR. I did that because I saw on a voucher "Captain Sloan."

Q You made no contract with Captain Sloan for hauling that vessel out, either in your own individual behalf or on behalf of the Underwriters of these insurance companies involved in this litigation?

A To the best of my recollection it was done by the owners at our suggestion.

Q The vessel sunk on December 15th; it was floated on January 11th following, floated and moored on January 11th. Let me refresh your recollection and ask you whether or not the vessel wasn't hauled out on February 12th, just a month and a day after it was floated?

A I can't remember the dates.

Q You haven't any data to fix that date?

A No, I haven't the data, without referring to my letters at the office.

Q Were you advised at any time by the respondent in these case, the Insurance Companies, that they denied liability under their policy?

MR. KERR. I object as immaterial.

A I think Mr. Mason told me they were going to deny liability.

Q Did you know as early as April 25th, 1908, that the individual respondent insurance companies in these causes advised the libellant, the Independant Transportation Company, that they denied liability under their policies?

A No, I didn't know what action they had taken with the owners.

Q When did you try to see if you could get an offer for the vessel, between what dates?

A I don't recollect the dates now, it was so long ago. it was after the specifications were made out and tenders called for. I don't remember the dates.

Q Were you instructed by the insurance companies involved to join with the owners in an effort to sell the vessel?

A No, I don't think I was. I have no recollection of it.

Q You weren't acting for the insurance companies in that behalf at the time you were trying to see if you could get a buyer, under instructions from them?

A I knew the underwriters were interested. I was acting for the benefit of everyone.

Q But you had no instructions from them?

A No instructions, no.

Q What was the understanding between the owners and the underwriters as to the sale, an understanding in writing or an oral understanding?

A I think there was an understanding in writing.

Q Where is that writing?

A I don't know where it is.

Q Did you ever see it?

A No, I don't think I did.

Q You don't know its contents then?

A No, I am not quite sure on that point.

Q Don't you know, as a matter of fact, that the respondent companies in these causes, in writing, on the 25th day of April, 1908, denied liability to the libellant under these policies, and weren't you so advised by Mr. Mason?

A I think I was advised by Mr. Mason to that effect.

Q You say that at the time the work was progressing

in an effort to haul the vessel out, that there was some delay by carrying away of the gear?

A Yes.

Q Who had charge of the work of hauling that vessel out?

A Mr. Sloan.

Q When she was hauled out in the river, I mean?

A You mean when she was raised?

Q When she was raised, yes?

A Captain Genero and Mr. Finch.

Q Who is Mr. Finch.

A He is a diver. He was working under Captain Genero.

Q Who was Captain Genero working under, the owner, the Independent Transportation Company?

A He was working under Mr. Walker and myself.

Q Who was paying him?

A The owners of the vessel.

Q And whom did Captain Walker represent?

A The owners.

Q Do you know that he was authorized to represent them?

A Only from his statement.

Q And by the action of the owners?

A Yes.

Q And who were you representing now, in the matter of the raising, I am speaking of?

A I was representing the owners for the time being.

Q You were not at that time representing the underwriters?

A Well, of course the underwriters were interested. I knew they were interested. I was called on by the owners.

Q You were called upon by the owners?

A Yes.

Q You had no instructions from the underwriters?

A None whatever.

Q Now, is the same true as regards the bills and work of hauling her out after she was floated?

A The same, yes.

Q And is the same true as regards the survey of the vessel after she was hauled out?

A It was.

RE-DIRECT EXAMINATION,

BY MR. KERR.

Q Captain Gibbs, the owners of this vessel, when she was sunk, under their policies were required to notify you, as the representative of the board of marine underwriters, were they not?

MR. GORHAM. The policies speak for themselves.

A I have never seen the policies; I don't know.

Q That is the fact, was it not? The reason you were notified by the owners in this case was that you represented the underwriters?

MR. GORHAM. We object. This witness doesn't know what reason the other man had in notifying him. The other person can testify what his reason was. This witness is incompetent to testify to such a state of facts and his testimony is incompetent in the record. We object to it on that ground.

A I presume that is the reason.

MR. GORHAM. We move to strike the answer of the witness out as not responsive to the question. It is his presumption.

Q Captain Genero was deputy under you?

A He was.

Q I notice on all these vouchers, stamped by your office, as follows: "Approved subject to discounts and

rebates, if any, and adjustment in the usual way. E. C. Gibbs, Surveyor B. M. U." The letters B. M. U. mean Board Marine Underwriters, do they not?

A Yes.

Q So that in approving these expense vouchers, you approved them as the surveyor for the board of marine underwriters in every instance, did you not?

A I did.

Q Mr. Walker was acting as—he was not acting for the board of marine underwriters, was he?

A No.

Q He was acting for the owners?

A He was.

Q So that in this case, as in all other cases where an insured has had a loss on his vessel covered by policies of members of the marine board of Underwriters of San Francisco, it is customary for the insured to notify you, as the representative of the marine board of underwriters?

A Yes.

Q That is the way. And the notice that was given to you was given to you by the owners in this case as in cases generally where there is a loss covered by policies of the marine board of underwriters, is that right?

A I think it was.

Q Now, the libellant in this case did not employ you as a surveyor independent of the fact that you represented the marine board of underwriters, did they?

MR. GORHAM: We object to that question as cross-examination of his own witness. He has testified he was acting at the request of the owners and without instructions from the underwriters.

Q We admit he acted at the request of the owners in accordance with the custom that requires the owners to notify the surveyor of the board of marine underwriters?

A There is no way of determining that.

Q Doesn't this determine this, Captain Gibbs. Everyone of these expense vouchers bears the approval of Mr. Walker,

who was employed by the insured, together with the approval of Captain Genero or yourself, representing, according to your own endorsement, the board of marine underwriters, and that it was necessary, in accordance with the usual practice in losses of this kind, where the board of marine underwriters are represented, to have the vouchers approved by the individual surveyor of the owner as well as the surveyor for the board of marine underwriters?

A It is.

Q When you approved these vouchers and put the stamp of your office upon them as surveyor for the board of marine underwriters, isn't it true, Captain Gibbs, (and these vouchers at the same time bear the individual endorsement of Mr. Walker acting for the insured), that these vouchers bore these double endorsements for the reason that that is the practice to have the vouchers bear the endorsement both of the surveyor for the individual as well as the surveyor for the underwriter?

A It is a common practice.

Q Now, take in case where you are notified by the owner of damage or loss to a vessel, you receive your compensation from the owner originally, and upon the adjustment of the loss, the expense of your services as surveyor for the board of marine underwriters, where there is more than one policy, is approved and paid by the companies represented by the board of marine underwriters, in accordance with the amount of insurance carried for them respectively on the vessel?

A It is.

Q One thing I overlooked in my direct examination, I want to refer back to. Captain Gibbs, you stated that you had made efforts to make disposition of this vessel and that \$750 was obtained for her in her damaged condition. I will ask you whether that amount was a fair and reasonable price to be paid for the vessel in her damaged condition?

A I think it was.

Q There was \$15,000 of insurance carried upon this vessel, all of it, we will assume, by the members of the board of marine underwriters of San Francisco. Did you have anything to do whatever with determining the value of this vessel for the purpose of this specific insurance?

MR. GORHAM: You mean prior to the negotiation of the insurance, at the time of the negotiation of the insurance?

Q At the time the insurance policies were taken up?

A I was called upon by the owners to make a survey, which, I presume, was for the purpose of insurance.

Q At that time did you undertake to determine the value of the vessel?

A I did.

Q What, in your judgment, was the fair and reasonable market value of this vessel immediately before she was lost, sunk, if she had been offered for sale in the open market by a party who was under no obligation to sell her, and was purchased by a party who desired to purchase a steamer, but was under no obligation to buy it? What would she be worth in your judgment?

A That is a pretty hard question to decide, just what she was worth. I found out what the vessel was bought for and what repairs had been laid out on her. My valuation was made, I think, about \$17,000.

Q You learned that the libellant paid, a short time before this insurance was taken out, for this vessel, the sum of \$12,500, and had made on the vessel after she was purchased and before the insurance was written, improvements, making the aggregate cost of the vessel about \$17,000?

A Yes sir.

Q That, in your judgment, was about the value of the vessel at that time?

A I think that was about the value.

Q In any loss, under any policy of insurance, marine insurance, of a company which is a member of the board of marine underwriters, I will ask you whether or not it is not the universal custom of the owners of such vessels to notify you of such loss as soon as it occurs, because of the fact that you are the representative here of the board of marine underwriters?

A I think it is.

Q All marine men and owners of vessels in Puget Sound know that you do represent that board, do they not?

A Most of them.

Q And on a loss on one of these marine policies, as I understand you, it is always customary for the insured to give prompt notice to the surveyor for the insurance company, if such surveyor is known?

A It is.

Q And you, being the surveyor for the board of marine underwriters, if the insurance company is a member of that organization, it is the duty of the insured to inform you?

A It is.

Q You then proceed to examine the vessel?

MR. GORHAM: I wish you wouldn't lead the witness so much. I think he ought to be able to testify himself; he is a very intelligent man.

MR. KERR: I will withdraw the question.

Q What do you do on receiving such notice, that is with reference to taking action, before communicating with the board, or otherwise?

A I communicate with the board sometimes before taking action, and sometimes I take action without communicating with the board. That is, I always communicate, of course,—

Q Is it actually your custom, where a vessel has sunk, for instance, here at Seattle, or at the place where this vessel was sunk, within that close proximity to your office, and you are notified, do you usually await specific instructions from the underwriters before going to make your examination, or do you not?

A I do not.

Q Now, when Mr. Hamilton notified you in this case that this vessel had sunk in the Duwamish, you didn't understand, did you, Captain Gibbs, that by giving that notice to you, that he was employing you to represent him as distinguished from the underwriters?

MR. GORHAM: We object to this line of re-direct examination as a cross-examination of the witness. He has testified in what capacity he went out there and at whose request.

MR. KERR: I want to get that clearly before the Court, what Captain Gibbs' relation to it was.

MR. GORHAM: We object as not proper re-direct examination.

(Question read.)

A Why, I took it for granted he was calling on me, as is usually the custom for owners to do.

Q Who had policies of insurance in the companies represented by the underwriters?

A Yes.

Q. Do you always act, in making these surveys, in conjunction with Mr. Walker, or do you act with other marine surveyors?

A Act with other surveyors.

Q You act with whatever surveyor the insured, the owner, happens to employ to represent him?

A Yes.

RE-CROSS EXAMINATION

BY MR. GORHAM:

Q At the time your office, through Mr. Genero or Captain Genero, approved the vouchers for the expense of raising and hauling out and repairing the vessel, or raising and hauling out the vessel, referring to the approval by Captain Genero of the expense vouchers, concerning which you have been interrogated by counsel for the libellant, as follows, "Approved subject to discounts and rebates, if any, and adjustment in the usual way", Signed, "E. C. Gibbs, Surveyor B. M. U.", was Captain Genero authorized by you to make such approval?

A He was.

Q And he was doing it on behalf of your office?

A Yes.

Q Was he authorized by you to bind the San Francisco board of marine underwriters?

A He didn't bind the board of marine underwriters. That stamp is always put on every bill we approve.

Q It is not put on there for the purpose of binding any of the board of marine underwriters, or any of the insurance companies members of the board?

A No.

Q What is the object of the stamp then?

A Simply to show the bill has been approved by the surveyor as being a just bill. It doesn't bind for every item of the bill, is the reason that item is put in, "subject to rebates, adjustment in the usual way."

Q Does it mean this, if the underwriters approve the expense, then the amount thereof is adjusted subject to discounts and rebates as you have approved it?

A Yes.

MR. KERR: I object as incompetent.

Q You say in arriving at the value of the Vashon at the time the insurance was negotiated involved in these causes, that you took the cost price a short time before paid by the Independent Transportation Company, and to that added what they had put on in the way of betterment, and the aggregate was the valuation?

A That was—to a certain extent that was used.

Q You won't say what the market value of that vessel was at this time?

A No, I wouldn't say what the market value was.

Q You won't say what the market value was of the vessel on the 15th day of December, 1907, before she sunk?

A No.

Q Now, at the time you made your investigation and survey of the vessel, after she was raised, was there anything in her condition which excited your suspicion as to whether or not the loss had been by natural causes, or had been induced by human agency?

MR. KERR: Objected to on the grounds that it is not proper cross-examination, immaterial and irrelevant and not an issue of any kind in this case.

A You mean after she was raised?

Q At any time when you were making the survey of her?

A Captain Genero reported that he found a couple of blocks out of the side of the vessel.

MR. KERR: I move to strike it out on the ground it is incompetent.

Q At what time did he make that report?

MR. KERR: Same objection.

A Made that report, I think after the vessel was raised, during the time they were raising the vessel, I think.

Q What effect would that have on the vessel as she lay moored?

MR. KERR: Same objection.

A Have the effect of filling her with water.

Q Did you report that fact to the underwriters at San Francisco?

MR. KERR: Same objection, incompetent, irrelevant and immaterial.

A I think I did.

Q In writing?

A Yes.

Q Do you know just the location of those blocks and the size of them?

MR. KERR: Same objection.

A About one and one-half inch blocks, I think, to the best of my recollection.

MR. KERR: Same objection.

Q Where were they located?

MR. KERR: Same objection.

A In the hold, below the main deck.

Q And below the water line?

MR. KERR: Same objection.

A I think they were.

Q That is below the water line as the vessel lay moored without cargo?

MR. KERR: Same objection.

A Yes sir.

Q What's the character of those blocks and the character of that fitting?

MR. KERR: Same objection.

A We don't know what the holes are made there for. Evidently been used for some purpose and then these blocks put in.

Q After the vessel was sunk and you made an examination of her on December 16, 1907, did you hold any communication with Mr. J. R. Mason, who was at that time agent for the Canton Insurance Office, one of the respondents in these causes?

A I think he was up in the office and we discussed—I told him the particulars about the case.

Q Do you remember that he was at that time representing in Seattle the Canton?

A I do.

Q Do you remember at that time of his cautioning you not to act for the underwriters or the Canton Insurance Office in any matter concerning the raising of the vessel?

MR. KERR: Objected to as incompetent, irrelevant and immaterial and not proper cross-examination.

A. I don't know that he did. He might, but I don't remember.

Q Do you remember that there was an understanding between you and Mr. Mason, as agent as aforesaid, that any activity on your part in reference to the raising of the vessel, was stated by you to be done at the special instance and request of the owners themselves, without regard to the underwriters?

MR. KERR: Same objection.

A I remember making a statement to him that I had been called upon by the owners to act in this case.

Q Do you remember that you at that time stated to him that you were acting solely in your capacity as an individual surveyor, at the request of the owners, and without regard to the responsibility of the underwriters?

MR. KERR: Same objection.

A I don't know; I might have made the statement.

Q Was that the effect of it—

MR. KERR: Same objection.

Q—in regard to the—raising of the vessel?

MR. KERR: Same objection.

A I remember of telling Mr. Mason I was called upon by the owners to act in this case, but I had received no instructions from the underwriters to do anything in the matter.

MR. KERR: I move to strike out the answer.

Q. Didn't you tell him it was distinctly understood between you and the owners you were acting as an expert marine surveyor in their behalf, at their request?

A No, I don't remember saying that.

Q Do you remember that he at that time warned you not in any way to act in a manner that would bind the underwriters?

MR. KERR: Same objection.

A. I think he did.

Q Did you recognize his authority as agent for the Canton Insurance Office to so advise you?

MR. KERR: Same objection.

A Yes.

Q Did you communicate that to the Independent Transportation Company?

A I did not.

RE-DIRECT EXAMINATION.

BY MR. KERR:

Q Captain Gibbs, you never saw those blocks that were alleged to have been removed from the hull of this vessel yourself?

A. I did, yes.

Q Did you see them in the vessel?

A I did not see them in the vessel, no.

Q You saw the places they had been removed in the vessel?

A Yes.

Q Was that after the vessel had been hauled out and the planking removed?

A I am not quite clear on that point, whether the planking had been removed or not when we saw them.

Q Those planks didn't extend through the hull of the vessel; they were on the inside, what is known as the skin of the ship?

A I didn't investigate to see whether they extended through. I understood from Captain Genero they did.

Q You don't know whether they extended through or not?

A No, I wouldn't swear to it myself.

Q You don't know when they were removed, whether before the ship was sunk, or after she was taken out of the water, personally you have no knowledge?

A No, only from what I heard from Genero.

MR. KERR: I move to strike out the Captain's testimony in regard to that matter, on the ground that it is incompetent, irrelevant and immaterial, and not an issue in this case.

MR. GORHAM: We submit at this time that he says Mr. Genero was acting under his instructions.

MR. KERR: I don't care whether he was or not. It is hearsay, incompetent, irrelevant and immaterial.

Q I find on some of these vouchers your approval personally?

A Yes sir.

Q As surveyor B. M. U., that is right.

A Yes.

Q Suppose there would have been no disposition on the part of the insurance companies whatever to have contested this loss, and these vouchers had been passed up to the board of marine underwriters with your endorsement on there, "subject to discounts and rebates, and adjustment in the usual way. E. C. Gibbs, surveyor B. M. U.", you would have expected the underwriters to have accepted that, as your endorsement and approval? They would have accepted it?

A I think they would have accepted my endorsement.

Q They wouldn't have questioned it at all. They would have accepted that endorsement and approval without any quibble whatever, wouldn't they?

A Not always.

Q It was put on there for the purpose of enabling the owner, in the event that these policies were paid, to have the amounts dated and approved for the cost of raising that vessel, and that these several items of cost that were approved by you and also approved by Mr. Walker were proper items of expense?

A That was our idea in approving them. They were approved because they were proper items.

Q But you knew when you approved them that if this matter was adjusted amicably between these parties, that these vouchers might be passed up with your approval on them to the board of marine underwriters or to the members of it?

A I did.

Q They would indicate they were your approval as surveyor for the board of marine underwriters, just as the stamp shows?

A Yes sir.

RE-CROSS EXAMINATION.

BY MR. GORHAM:

Q You asked him about the location of that wreck, and he said it was above the boat house. It was also up the river from the old brick yard, was it not?

A I think so.

Q You remember the old brick yard at that time?

A Yes sir.

Q It has been a land mark there ever since you have been there, hasn't it?

A Yes, as far as I know.

Witness excused.

CHARLES H. HAMILTON, recalled, testified as follows:

RE-DIRECT EXAMINATION,

BY MR. KERR:

Q At the time this insurance was written in what trade and where was the Vashon employed?

A Running from Seattle to Alki Point.

Q Carrying what?

A Mostly passengers, a little freight occasionally.

Q Did she continue in that traffic until she was laid up?

A Yes, sir.

Q Within a radius of thirty miles of Seattle, is it?

A Yes sir.

Q How long did she continue in that business after this insurance was taken out on July 16, 1907?

A She continued in there until some time in August.

Q Then what was done with her?

A She was moored at what is known as the King Street dock until she was taken to the Duwamish in December.

Q Where was the King Street dock?

A Just below the old coal bunkers at the foot of King Street.

Q In Seattle?

A Yes sir.

Q At what date was she taken up to be moored in the Duwamish River?

A About the first of December.

Q Was she taken directly from the King Street dock to her mooring in the Duwamish?

A I think she was.

Q Whereabouts with reference to the Spokane bridge was she moored in the Duwamish River?

A I should say in a direct line, possibly a quarter of a mile above the Spokane Avenue bridge; according to the meanderings of the river possibly half a mile.

Q Were there other vessels moored in the river?

A Yes sir.

Q Do you remember the Steamer Venus?

A Yes.

Q Were you up there after she was moored and before she sunk?

A Yes sir.

Q I wish you would state to the Court the manner in which she was moored, and for that purpose I will call your attention..... to a rough sketch or diagram, which I will have marked for identification Libellant's Exhibit "E".

MR. GORHAM: Will you let that show that is part of proof of loss. Let the whole thing go in as "E"? In other words I don't want to show it is a new diagram. It is the diagram originally attached to the proof of loss.

MR. KERR: I don't understand that at all, this was part of the proof of loss.

Q I call your attention to a paper which is attached to the affidavit of Fred Warner and Frank Faber. Does that

diagram represent in a general way the manner of the vessel's mooring?

A Yes sir.

MR. GORHAM: We object as incompetent. This witness hasn't qualified as a mariner.

MR. KERR: I am not asking whether he is competent.

Q Just state in a general way what lines you observed to be out on the vessel, how they were fastened, whether anchors or piling or what?

A The vessel was moored with her head up stream. There was one anchor out from the bow on the port side and a line running from the bow on the starboard side. There were two lines run out from the stern, one from the starboard side and one from the port side. I think there was a brace line run out from either about midships or a little aft midships towards the shore to a pile. In fact I think all of the lines were made fast to piles excepting the one by the anchor.

Q About what time did you examine her with reference to the time she was moored there?

A I went up there a few days after she was moored to see what position she was in.

Q Did she or not appear to you to be in safe moorings, safe position?

A Yes, she appeared to be in a very good position.

MR. GORHAM: We object as incompetent and move to strike the answer of the witness out.

Q When did you first learn that the vessel had sunk?

A The following morning.

Q December 16th?

A Yes, I think that was the date.

Q What did you do on receiving notice that the vessel had gotten into trouble?

A Instructed Captain Warner, who was our port captain at the time, to go over there and examine into the vessel, examine into the accident, and also notified Mr. Walker and Captain Gibbs that the vessel had been sunk.

Q Did you personally notify Captain Gibbs?

A I think I did, either in person or over the telephone.

Q How did you happen to notify Captain Gibbs?

MR. GORHAM: We object as immaterial and not binding upon the respondents.

Q Just answer?

A It has always been customary with us to notify Captain Gibbs at any time there was any accident to any of our vessel property, as he represented the board of San Francisco underwriters.

Q These policies that you have were in companies that were members of that board, as you understood it?

A Yes sir, at least part of them were.

Q Did you employ Captain Gibbs, or your company employ Captain Gibbs as an individual surveyor to survey this vessel for you?

MR. GORHAM: We object as tending to impeach the libellant's witness. Captain Gibbs, heretofore put on the stand by the libellant.

A We employed Captain Gibbs not as our direct representative.

Q Who did you employ as your direct representative?

A Frank Walker.

Q How long have you been in the transportation business here in Seattle?

A Well, off and on since '92. Not all the time continuously.

Q Have you had, during the last eight or nine years, since Captain Gibbs has been a resident here as representative of the board of marine underwriters, any losses on any policies of insurance on any of your vessel property?

A We have had some partial losses.

Q Some partial losses?

A Yes sir.

Q Who in those cases acted for the board of marine underwriters?

MR. GORHAM: We object as immaterial.

A Captain Gibbs.

Q Did you give any different or other notice then in this particular instance than you had given in other instances of a like character?

MR. GORHAM: Same objection.

A No sir.

Q Among ship owners, charterers and operators here on Puget Sound, who, if anyone, is generally understood to represent the board of marine underwriters of San Francisco

MR. GORHAM: We object as incompetent.

A Captain Gibbs.

Q Now how and on what theory did you hand your report to Captain Gibbs, what was your reason for doing it?

MR. GORHAM: We object as incompetent, irrelevant and immaterial and not binding upon the respondent companies.

A We notified Captain Gibbs for the reason we knew he represented the San Francisco board of marine underwriters and that they were interested in this insurance we had on the Steamer Vashon, and to protect our interests, we considered that it was necessary to have a representative of the insurance company on the survey.

Q Did Captain Gibbs at any time during the time, or from the time this vessel sunk up to the time the final survey or disposition of the vessel was made, ever inform you or indicate to you that he was representing anybody else than the board of marine underwriters?

MR. GORHAM: We object as an attempt to impeach the witness Gibbs of the libellant.

MR. KERR: I am not trying to impeach anyone. I am trying to find out what the facts are.

A No.

Q Why did you have these vouchers for money expended by this libellant in raising that vessel and putting her in a position so that she could be surveyed, approved

before they were paid, by the surveyor of the board of marine underwriters of San Francisco? Why did you get that endorsement as well as the individual endorsement of your surveyor?

MR. GORHAM: We object as incompetent, irrelevant and immaterial, and not binding upon the respondents.

A We have always thought it was necessary to have the approval of both the surveyor for ourselves and the surveyor for the board of underwriters, of all bills, in order to collect from the insurance company.

Q In any other losses you have had where bills of expense were incurred, what did you do, if anything, with reference to getting the endorsement of Captain Gibbs or his office?

MR. GORHAM: We object as incompetent, irrelevant and immaterial.

A We did precisely as we did in this case with the endorsement.

Q Did they pay those bills, the insurance companies, members of the board that he represented?

MR. GORHAM: Same objection.

A Yes sir.

Q At the time you incurred these expenses, under direction of Captain Gibbs and of your own surveyor, Mr. Walker, paid these various bills, did you at any time have any knowledge or information that Captain Gibbs was acting for anybody else than the insurance company?

A No sir, I did not.

Q After this vessel sunk how soon was that you visited it?

A I think I went over there on the 16th or 17th.

Q Did you observe the work that was done in raising the vessel and getting her afloat and in docking her finally?

A I only made the one trip over to her while she was sunk. I didn't see her again until she was raised and brought over to Sloan's ship yard.

Q Where is the Sloan ship yard?

A Near the Albers' mill.

Q Did your company make a contract with Sloan to haul this vessel out so she could be surveyed?

A Yes sir.

Q Do you remember about the date when that contract was made with reference to the time she was raised?

A I think it was sometime in January, the latter half of January.

Q What, if any, negotiations had you, had your company attempted to make for the docking of this vessel, so she could be surveyed, at the time you actually entered into the contract with Sloan?

A Captain Warner, on our behalf, looked around to see where the vessel could be hauled out. It was our idea it would probably take some little time to make the repairs. We wanted to haul her out in a place where we could do it the cheapest and store her the cheapest. We had either Captain Warner or one of the surveyors see King and Winge about it. They could haul her out, but they wouldn't keep her any length of time except at a large expense, and for that reason we made the contract with Sloan, as he made us the cheapest offer for hauling out and storing.

Q Did you loose any time at all after that, either in the raising of the vessel or after the raising of the vessel, in an attempt or in making arrangements to have her pulled out so she could be examined?

MR. GORHAM: We object as leading. State what he did. The Court will determine.

A No, we did everything possible to hurry the matter along; there was considerable delay in raising her in the first place on account—

Q Was the work prosecuted continuously or otherwise in raising?

A I think it was prosecuted continuously.

Q Was there any delay after Captain Sloan took charge of her for the purpose of pulling her out?

A There was the delay of getting ready to pull her out. He had no ways ready. He was delayed in getting those ready. He was also delayed after he started pulling her out by reason, I presume, of not having proper gear. He only got her part way out and then had to go over it again.

Q You have spoken of Sloan as proprietor of the ship yard. I will ask you to state whether Sloan was, in your belief, a competent person to do that work successfully as well as speedily?

MR. GORHAM: We object to that question as incompetent and immaterial, whether this witness believed he was competent or not. The question was whether he was competent, not what the witness believes.

A As far as we knew, Sloan was competent to do the work.

Q How long had he been working in the ship building business here?

A That I don't know.

Q Did your company, in contracting with Sloan to haul this vessel out so that she could be surveyed, believe that he could do the work in a reasonable time?

MR. GORHAM: We object as immaterial, what they believed.

A Yes, we did.

Q Now, what effort did you make, if any, to induce Sloan to facilitate the work, after the vessel stuck on the ways or before that time?

A We were continually after Sloan to use his best efforts to hurry the thing along as fast as possible.

Q How long was it after the vessel was actually hauled out before the survey was made?

A Why, I think the vessel was hauled out about—completely hauled out about the middle of February, but the final papers in the survey were not delivered to us until about the middle of April.

Q How much money did the libellant expend in raising this vessel and getting her out where the survey could be made?

A I think it was between three and four thousand dollars; that includes all the salvage operations.

Q Under whose supervision were those expenses incurred, if any?

A Under the supervision of Mr. Walker and Captain Gibbs.

(Recess taken.)

Thursday Afternoon, November 10, 1910.

CHARLES H. HAMILTON, Recalled.

DIRECT EXAMINATION

BY MR. KERR:

Q I call your attention to three policies of insurance which I have had marked for identification the libellant's exhibits "F", "G" and "H", and ask you to examine them and state to the Court whether these are the policies of insurance upon which these actions were founded?

A Yes, sir.

Q These policies were issued by these companies and delivered to these companies, were they?

A Yes sir.

Q For the identical consideration named in the policy?

A Yes sir.

Q Were these policies in full force at the time this vessel sunk?

A Yes.

MR. GORHAM: We object, as calling for the conclusion of the witness.

Q There has been no attempt on the part of these companies to cancel them for any reason?

A No sir.

Q I notice that the thirteenth clause of each one of these policies is as follows: "If there be an agent or surveyor of the insurers located at or near any place where repairs are made, or proofs of loss or average taken, said agent or surveyor must be represented on the surveys, if any be held, and all bills for repairs, or proofs of loss or average, must be certified to by him, or they will not be allowed by this Company." Was it in pursuance of this

thirteenth clause in these three insurance policies that you notified Captain Gibbs?

A Yes sir.

Q And was it in pursuance of this clause that you had Captain Gibbs, or his deputy, Captain Genero, O. K. these vouchers for the expense of salvaging the vessel?

A It was.

Q I call your attention to what purports to be the cost of raising and docking and overhauling the Vashon, preliminary to the survey, for the purpose of determining the loss, numbered from and identified as Exhibits D-1, D-2, D-3, D-4, D-5, D-6, D-7, D-8, D-9, D-10, D-11, D-12, D-13, D-14, D-15, D-16, D-17, D-18, D-19, D-20, D-21, D-22, D-23, D-24, D-25, D-26 and D-27, and ask you to examine these exhibits and state whether or not they represent correctly the actual outlay for the raising, floating and docking and preparation of this vessel for the final survey made by Captain Gibbs and Mr. Walker?

A Let me ask you a question. Are these supposed to be all of them?

Q Those were the ones that were given to me.

A I can identify them as far as they go.

Q That is the list of them?

A Yes, I guess that's all right. Yes, those are all bills we incurred pertaining to the salvaging of the Vashon.

Q Those sums were paid out by you or by this libellant?

A By the Independent Transportation Company.

Q Aggregating?

A \$3964.80.

Q Does that include that? (indicating voucher).

A Yes sir.

Q That includes the item of \$225 for services of Frank Walker, marine surveyor?

A Yes.

Q With the exception of that voucher, all the other vouchers referred to contain or have stamped upon them

the approval of either Captain Gibbs or Captain Genero, surveyor for the marine board of underwriters?

A Yes sir.

Q Were there any other expenditures?

A Nothing that I know of excepting that list. These three don't appear to have any approval on, this one of Walker's and that one of the \$10 for storing dock, this \$150 from Sloan Brothers for the storage of the Vashon.

Q What was this item of \$10 to the City of Seattle?

A That was for mooring her out at the buoy.

Q At the City's buoy?

A The City's buoy, yes.

Q During what period of time?

A The City's buoy, the sum of \$10. Let me see the Crosby Tow Boat Company bill, that may give the date. "Shifting Steamer Vashon from Albers dock to the buoy." That was on the 14th. Delivering steamer and return to buoy again on the 15th. She was taken over there, then brought back, then taken over again.

Q That was in the month of February, was it?

A In the month of February.

Q The other item?

A The other is \$150. That is settlement for storage of the Steamer Vashon, part of the Sloan contract.

Q When, what dates?

A From May 27th to August 27th.

Q That was between the date of the survey and when the vessel was sold?

A Yes sir, that was the final payment made, although we made a contract with them for the hauling out and the storage of the vessel. I don't remember the exact price of that.

Q Did you have any other insurance on this vessel than these three policies?

MR. GORHAM: We object as immaterial and irrelevant.

A Yes, we had insurance with the Fireman's Fund and I think one other company besides those three.

Q These three policies aggregated \$9,000. You had in addition to that \$6,000 of other insurance?

A Yes, an aggregate of \$15,000.

Q Were the other companies members of the marine board of underwriters at San Francisco?

A Well, I know the Fireman's Fund was. I can't say positively as to the other. I have forgotten who the other was.

Q Did they settle their proportionate part of the loss?

MR. GORHAM: We object as immaterial.

Q (continuing) Including their proportionate part of the cost of salving the vessel?

Mr. GORHAM: Same objection.

A Yes, they did.

Q Including the fees of Captain Gibbs as surveyor?

MR. GORHAM: Same objection.

A Yes sir.

Q When did you first learn that the damage to this vessel by reason of her sinking was an amount in excess of fifty per cent of her value, before or after the survey was made?

A We never knew definitely until the survey was made just what the damage was.

Q Now, as soon as you ascertained from the survey what the damage was, what did you do?

MR. GORHAM: We object as incompetent, irrelevant and immaterial.

Q What did you instruct Johnson and Higgins to do?

A We instructed Johnson and Higgins to tender an abandonment of the ship to the underwriters.

Q Have you any personal knowledge of when that notice of abandonment was given?

MR. GORHAM: We object as not the best evidence, because it speaks for itself; it is in writing.

A We notified Johnson and Higgins on the day that we received the survey, which was, I think, the 15th of April, and they notified the underwriters either directly here, or in cases where they were not represented here, through their San Francisco office, the following day.

Q How long had the libellant owned this vessel prior to the time they took out this insurance?

A We took out that insurance immediately after we became owners, as soon as we could take it. We applied for it as soon as we became the owners of it.

Q What did you pay for the vessel when you bought it?

A \$12,500.

Q And what expenditures did you make on her up to the time this insurance was taken out?

MR. GORHAM: We object as immaterial.

A We spent between \$4000 and \$5000 on her in improvements and betterments.

Q Up to the time she was lost?

A Yes.

Q You bought her here in the open market, did you?

A Yes sir.

Q After this survey was made what became of the Vashon?

A She remained on the ways at Sloan Brothers' yard there until August. We finally succeeded in selling her in August. I don't know what became of her after that.

Q What negotiations, and under what arrangement, if any, were any negotiations made for the sale of this vessel, after she was put upon the ways by Sloan, after she was opened up and her engines—

A We consulted with Captain Gibbs and Frank Walker as to what was the best thing to be done. We all agreed the only thing to be done was to sell her. We all went to work with the idea of trying to find a buyer for her. We took the matter up with other steamship people. For one,

I know that Mr. Guyan was approached, I think by Captain Gibbs. I think he went so far as to send a man down to examine her, but nothing ever came of that.

Q What was she finally disposed of for?

A \$7050.

MR. GORHAM: We object as immaterial.

Q Was that the valid value of her, in your judgment. in her damaged condition?

MR. GORHAM: We object as incompetent.

A That was the best offer we were able to get for her. We considered it a good thing to sell her.

Q Was she sold with the knowledge and consent of the underwriters?

A Yes.

Q What effort, if any, did Captain Gibbs make to ascertain the cost of her repairs, of repairing the vessel?

A Why he and Mr. Walker prepared plans and specifications, what was necessary to repair the vessel, and those plans and specifications were submitted to at least two, if not more repair shops, and two of them bid on the work.

Q I call your attention to two letters, each bearing date April 27, 1908, from the Heffernan Iron Works, and one of April 16, 1908, from Hall Brothers Marine, Railway and S. B. Company, both directed to Captain S. B. Gibbs, San Francisco Board of Marine Underwriters, Colman Building, Seattle, Washington. I will ask to have them marked for identification Libellant's Exhibits "F" and "G". I ask you to state whether those are—

A The original bids that we obtained there.

Q These respective companies took the repair of that vessel upon the specifications of Captain Gibbs and Mr. Walker?

A. Yes sir.

Q Did you receive those from Captain Gibbs?

A. Yes sir.

Q Was it after the receipt of these letters that you undertook the sale of the vessel in her damaged condition?

A Yes sir.

Q What was the condition of the vessel after she was hauled out so she could be examined by Mr. Sloan?

MR. GORHAM. We object, same objection.

A She was full of mud and dirt and oil and generally in a very filthy condition both as to her hull and her main deck and more or less in the cabins. The furniture was practically all ruined with the mud.

Q I note that one of these bids, Exhibit "F," is for the sum of \$14027.00, for repairing the Vashon, provided the Heffernan Engine Company was given four months in which to do the work. The other bid of the Hall Brothers Marine Railway and Ship Building Company for \$23500, provided the work was done within sixty days?

A Yes sir.

Q Did you regard these bids in the light of the damage to the vessel, as being a fair and reasonable amount for the repair of that vessel within that time limit, or as good bids as you were able to get?

MR. GORHAM. We object as incompetent.

A Those were as good bids as we were able to get at that time, in fact the only bids we were able to get.

MR. KERR. I offer these in evidence as Libellant's Exhibits "I" and "J."

MR. GORHAM. We object as incompetent and immaterial.

Q Now, were you able to secure from Captain Gibbs or Captain Gibbs and Mr. Walker, any estimate of the cost of repairing this vessel, or the extent of the damage to her until the survey was made?

A No sir.

MR. GORHAM. We object as immaterial.

Q Through whom were the proofs of loss made to these underwriters?

A Through Johnson and Higgins.

Q Was ever any objection made to your company, the libellant in this case, as to the character of the proofs of loss after they were made?

A None to my knowledge.

Q The loss has never been paid by any of these defendants?

A None by these three companies.

MR. KERR. I want to offer these three policies. Exhibits "F," "G," and "H."

Q Are those policies in the same condition now as when you received them from the company?

A What do you mean, same reading on them or same writing?

Q Are they in the same condition for all purposes of the contract?

A So far as I know, yes sir.

Q After this vessel sunk while these preliminary steps were being taken to raise her, get her out where she could be surveyed and examined, what knowledge, if any, did J. M. E. Atkinson and Company, or Mr. Tomlinson, representing that company, and Mr. J. R. Mason, representing the Canton, have of what was being done towards salving the vessel or determining the extent of the damage to her?

A They were in constant touch with Captain Gibbs, both of them, consulting with him more or less about the matter.

Q Were you present when Tomlinson and Mason had a conversation with Mr. Shuback in regard to the damage to this vessel and the attitude of their companies with reference to it?

A I was present at one conversation between Mr. Shuback and Mr. Tomlinson. Mr. Mason was not present.

Q Do you remember when that was with reference to the time this survey was made, before or after?

A Before, it was made before the survey was made. It was soon after the accident in the first place.

Q Was Captain Gibbs then acting in connection with your surveyor, Mr. Walker, with reference to the raising of this vessel?

A Yes sir.

Q What was that conversation?

A Well, in discussing the matter in a general way, Mr. Shuback asked Tomlinson what was the attitude—what would be the attitude of his company in connection with that loss. Tomlinson volunteered the information that his company would not stand on technicalities, if the loss proved to be a right and proper one, that they would settle.

Q When did you first learn, or your company, that these three companies denied liability on these policies? How long after the proofs of loss had been furnished?

A I don't think that they definitely denied liability until about the time the adjustment was made. There was some question as to whether or not they would accept the abandonment. My recollection is they were waiting to see what attitude the Fireman's Fund of San Francisco was going to take and they led us to believe they would be governed largely—

MR. GORHAM. We object to the conclusion as to what was done. Let him state what the talk was and the talks will show if they led anybody to believe anything or not.

Q Just state what they said, if you remember?

A I can't give you the definite conversation in so many words, but my recollection is that they said they would be largely governed by the action of the Fireman's Fund at San Francisco, and the matter was staved off from time to time. We couldn't get any definite answer from them as to whether they would or would not pay.

Q Why did you not give notice of abandonment prior to the time this survey was made?

A We couldn't very well give notice before the survey was made, as we didn't know the extent of the damage.

CROSS EXAMINATION.

BY MR. GORHAM.

Q You say that this vessel was bought in the open market by the Independent Transportation Company. What did you mean by that?

A I don't know what you might construe the open market.

Q I am asking you what you mean when you used that language?

A Well, that the vessel was for sale. She could have been possibly bought by anybody. She had been there for sale for sometime, I believe, and we came along and bought her.

Q Why didn't you go to the agent with whom you negotiated the insurance instead of the surveyor at the time of the loss?

A It has always been our custom at all times to notify Johnson and Higgins, who act as our brokers, and the surveyors. We have never, to my knowledge, notified any agents direct.

Q And Johnson and Higgins being your brokers, corresponded with the underwriters and their agents in reference to the loss of this vessel, did they not?

A You mean they would be acting as our agents in the matter?

Q Yes?

A Yes sir.

Q Do you remember that the Canton, for instance, advised Johnson and Higgins, as your agents, as early as April 24th that they denied any liability under that policy, in writing?

A As early as April 24th?

Q Yes, April 24, 1908?

A That would have been after the survey was made.

Q I am asking you if you remember?

A I don't remember. I don't think I saw those letters. They may have done so.

Q Do you remember whether or not Johnson and Higgins requested the consent of these insurance companies to the sale of the vessel, requested it in writing?

A I don't know whether they did or not.

Q Do you remember what reply—if they did so request in writing, do you remember what reply these insurance companies gave to your agents, Johnson and Higgins, in response to that request?

A No sir, I don't. I might say, for your information, when Johnson and Higgins handled these things for us, they attended to all of the details. We were not always advised of everything that they did. We left the matter entirely with them.

Q When you stated that the vessel was sold with the knowledge and consent of these underwriters, did you mean these companies?

A I made that statement. We were so informed by Johnson and Higgins. I didn't make it in that way, though. That is where I got the information.

Q You were informed by Johnson and Higgins—

A That the companies had consented to the sale.

Q These particular companies, these respondent companies in this law suit?

A They said "the companies." I presumed they meant all the companies.

Q The Canton and the Yang Tsze you didn't know?

A I presumed so.

Q I believe you stated this morning that you did visit the vessel prior to her sinking?

A Yes sir.

Q She had been moored there by Captain Warner?

A Yes sir.

Q Acting as your captain?

A Yes sir.

MR. KERR. I offer Exhibits "D-1" to "D-28" in evidence.

MR. GORHAM. We object to the same as incompetent and immaterial.

Witness excused.

ADJOURNMENT TAKEN TO BE RESUMED IN PURSUANCE OF AGREEMENT.

Seattle, Washington, November 14, 1910.

Continuation of Proceedings.

PRESENT: Mr. Kerr, for the libelant.

Mr. Gorham, for the respondent.

The respondent, China Traders Company, limited, waives any benefit accruing to it by reason of the failure of the Independent Transportation Company to commence the above entitled action, case No. 3849, within the term of twelve months next after the accruing of the loss. A stipulation to that effect having been entered into between the principals.

MR. FRANK WALKER, recalled on behalf of the libelant, testified as follows:

Q (Mr. Kerr). State your full name to the Court?

A Frank Walker.

Q What is your occupation?

A Marine surveyor.

Q What was your occupation on December 15th, 1907?

A Marine surveyor.

Q Were you acquainted with the stern wheel steamer Vashon?

A Yes sir.

Q How long had you known that steamer prior to the time she sank in the Duwamish river December 15th, 1907?

A I can hardly say. I had known her for some years.

Q Do you remember about the time she sank in the Duwamish river?

A Yes sir, I do.

Q How soon after she sank did you examine her?

A The next day, the day after, I think.

Q By whom were you employed to examine the vessel?

A By the owners, the Independent Transportation Company.

Q What time on the 16th of December did you first see her?

A Oh, I could not answer that. I do not remember what hour in the day.

Q Did you see her more than once that day?

A I saw her as the tide would allow.

Q Did you examine her in connection with Captain Gibbs, the evening of the 16th?

A I did.

Q What was the stage of the tide then?

A I think it was about half tide.

Q Did you observe at that time, or any other time before the work of raising was commenced, the manner in which she was moored?

A Well, it was hard to determine the manner in which she had been moored.

Q Did you observe any lines?

A Oh yes, there were numerous lines. I did not take any special observation of them, only to note what were out at the time, and see if she was held properly at the time.

Q How was she lying at the time you observed her?

A She was lying with her head up stream, her stern at the bank, the starboard corner of the wheel on the bank; the forward part of the vessel was under water.

Q Calling your attention to libellant's exhibit "C," which purports to be a report of the survey of the Vashon,

and specifications for repairs. I will ask you to state whether that is your signature attached to that exhibit?

A Yes sir, that is my signature.

Q Did you participate with Captain Gibbs in making that survey and these specifications for repair?

A I did.

Q The matters and things set forth in that certificate are true?

A Yes sir.

Q Did you examine this vessel after she had been raised and hauled out of the water by the Sloan Ship Building company?

A I did.

Q Did you examine her hull?

A I did.

Q Did you examine her for the purpose of ascertaining if possible, what caused the vessel to sink, for any evidence of what caused her to sink?

A We searched for any causes that might be found to account for her sinking.

Q You heard the testimony of Captain Gibbs with reference to some plugs?

A I did.

Q They were out of the vessel when you examined her. Where were these plugs, did you observe them?

A Yess, I observed these plugs. They were in the inner skin of the vessel and did not extend through the vessel.

Q Did the absence of these plugs on the inner skin of the vessel have anything to do, in your judgment, with the sinking of the vessel?

A No, not unless the outer planking was leaking badly.

Q Did you find any evidence of the vessel having leaked through the outer planking?

A No, no evidence.

Q Were you able to form any opinion as to how the vessel sunk, by reason of her position, when you first discovered her after she sank?

A No, I was unable to form any opinion as to what caused her to sink.

Q You did find one end of the vessel on the bank?

A I found one end of the vessel on the bank. That was the only clue we had. But the mooring might have been tampered with and the vessel's stern swung into the bank.

Q Had you any personal knowledge of heavy wind storms prevailing for a period of say ten or fifteen days, on one or more occasions, prior to the sinking of the vessel?

A I could not say, I do not remember now.

Q After you and Captain Gibbs visited her on the 16th, what, if anything was ordered to be done with her?

A Captain Gibbs and myself agreed on a plan for raising the vessel, and proceeded immediately with that plan.

Q I wish you would just take the steps up in chronological order. State just what you did from that time on until the final survey was made, as shown by exhibit "C"?

A I think the survey report explains that.

Q It explains generally what you found. But was the work of raising the vessel prosecuted continuously?

A It was, as the tides would allow.

Q Was the work of raising the vessel one of difficulty or otherwise?

A It was a difficult performance.

Q In a general way, about what was necessary to be done, and what was done, to raise the vessel in the first place, preliminary to having her hauled out?

A This describes it very clearly. We examined the bottom of the river and the bottom of the vessel. That all openings were made tight. Four sets of dolphins were driven, two forward and two aft, and capped. That heavy cables were passed under the vessel and lead to barges

rigged at each side. That dolphins and necessary scows and pile drivers and tugs were employed.

Q Now have you examined these vouchers for salvage expenses number 'D1' to "D29"?

A I do not know the parties, but I examined the vouches and expenses.

Q With the exception of two or three, they all bear the endorsement of yourself and Captain Gibbs?

A I believe they do.

Q Were all these expenses incurred in raising this vessel and hauling her out, preliminary to the final survey?

A They were.

Q Were they necessary expenses?

A Absolutely necessary.

Q Now I see that these expense vouchers bear your endorsement and also the endorsement, with the exception of two or three, of either Captain Gibbs, or Genero. How did you happen to have these expenses O. K'd in that way?

MR. GORHAM. I object as immaterial.

A Captain Genero, acting deputy, and Captain Gibbs, incurred sundry expenses in raising the vessel. He attended the vessel all the time until she was raised for Captain Gibbs, and all expenses incurred by Captain Genero about that time were approved by Captain Genero. Myself for the owners and Captain Genero for the underwriters.

Q Do you remember about the time they succeeded in raising the vessel?

A I do not remember about the dates, Mr. Kerr, they are all set forth in that survey.

Q Assuming that they end about the 11th day of January, did the work of raising the vessel continue from the time they started in until that date?

A Yes sir.

Q How soon did they start in after the vessel sank?

A Started in immediately after Captain Gibbs and myself surveyed the vessel.

Q Now after they completed her raising and moored her, then what was done?

A Then we made arrangements to haul the vessel out; haul the vessel out of the water for the purpose of survey.

Q Did you participate in the negotiations for a place at which she could be hauled out, and in the arrangements for hauling her out?

A I did.

Q It appears that the vessel was hauled out by Sloan & Company?

A Yes sir.

Q Did you know when the negotiations began with Sloan to haul the vessel out?

A I do not.

Q About how soon, in your judgment was it after she was floated?

A As soon as the vessel was floated, Captain Gibbs, myself and owners conferred as to what was best to do. It was decided to find a place to haul her out of the water immediately, and steps were taken to find any firm that would haul her out. And, if I remember right Sloan was the only one that could give satisfactory terms.

Q Was it practicable to undertake to put her upon a regular dry dock?

A The expenses would have been too great.

Q Now, after the contract was made to give Sloan the job of hauling her out, what did his firm do with reference to hauling the vessel out, so that she could be surveyed?

A His firm immediately went to work to build ways in their yard near the Albers mill.

Q Then did they undertake to pull her out?

A Yes, on these ways.

Q Do you remember the occasion when Captain Genero

Q Then What happened?

A I think they rather underestimated the weight of the vessel. They had great difficulty in getting her out

of the water. They got her partly out and then notified us that she was hauled out ready for survey. We examined her as she was partly out, and found we could not make the survey, the stern was still in the water. They reconstructed the ways. They jacked the vessel up and constructed ways and eventually hauled her out high and dry.

Q How soon after you got her out of the water did you make the survey?

A We made our survey as soon as possible.

Q Did you and Captain Gibbs and Captain Genero, while the vessel was stuck on the ways attempt to make any investigation?

A Oh, we attempted to make an investigation a number of times.

Q What was the condition of her hold?

A The hold was in a very terrible condition, just as set forth in the survey report, full of mud and oil, especially fuel oil.

Q Do you remember the occasion when Captain Genero attempted to go into the hold of the vessel with a lantern?

A I do.

Q What occurred?

A Both Captain Gibbs and myself warned him to come out, that it was dangerous to put a light into the hold.

Q Why?

A On account of the gases given off from the fuel oil.

Q Were you able, either you or Captain Gibbs, or both of you, to determine the extent of the damage to this vessel until the survey was made?

A Not until the survey was made.

Q Were you cognizant of the negotiations that went on for a sale of the vessel in her damaged condition.

A It was.

Q Do you remember when it was sold by Captain Gibbs for \$750?

A Yes sir.

Q What in your judgment as to whether the sum realized for the vessel was a fair, reasonable value of the vessel, in her damaged condition?

MR. GORHAM. I object as immaterial.

A I considered the price was fair and reasonable, as she was fit for nothing but junk.

CROSS EXAMINATION:

Q (Mr. Gorham). What became of the vessel?

A She was sold to a man by the name of Rubenstein.

Q What became of her?

A I did not follow her after that.

Q Is she still afloat?

A I could not say. I have lost sight of her.

Q You saw these plugs you found in the inner skin of the vessel?

A Yes, they showed in the ceiling of the vessel.

Q Well, there was a space between the ceiling and the hull proper?

A Yes, the thickness of the frames.

Q And if the plugs were in the ceiling of the vessel, that would still permit the water to run in through the hole, would it not, through the holes made for the plugs in the hull?

A There were no plugs in the hull, no holes in the hull?

Q No holes in the hull at all?

A No sir.

Q Then Captain Gibbs is mistaken?

A Captain Gibbs is quite correct. There were plugs in the ceiling of the vessel. There were holes where the plugs had been in the ceiling of the vessel. They did not extend through the outer planking of the vessel.

Q There were plugs put from the inside?

A Yes sir.

Q And not from the outside.

A Not from the outside.

Q And not extending through the outside plank?

A No, not extending through that.

Q Did you and Captain Gibbs—did you call Captain Gibbs' attention to the fact that these plugs were in the ceiling of the vessel?

A I did, when we were making the survey.

Q That is April 15th?

A No, we made the survey, we completed it on April 15th, it took us sometime to make the survey.

Q When did you first call Captain Gibbs attention?

A At the time we were examining the vessel to find out her general condition, what was wrong with the vessel.

Q Where was she then?

A On the Sloan ways.

Q You made no examination in reference to these plugs while the vessel was in the Duwamish river?

A Yes, I made a casual examination at that time.

Q What did you find then with reference to the plugs?

A I found at that time that the diver was under the impression that these plugs went through the vessel, and these plug holes went through the vessel, and had plugged that up before raising the ship.

Q That he had plugged that up?

A Yes.

Q He had plugged that up?

A He had.

Q Inside or outside?

A Inside.

Q Did you ever see the plugs away from the ship, did you ever see the plugs in Captain Gibbs office?

A No sir.

Q What was the size of the plugs?

A I could not say now. They might have been an inch and a half.

Q How many were there?

A I could not say. I did not take any notice, because it was not material at all, so far as the sinking of the ship was concerned.

Q You say that all the items of expense approved by Captain Genero were incurred by him?

A Incurred by him under our approval.

Q Well, what I want to find out is, whether the owners, through you, directed and authorized these expenses, or whether the owners stood by and let somebody else do it?

A No, the owners authorized them through me.

Q Then these expenses were authorized by the owners?

A Most decidedly they were.

Q So that you did not mean to say, when you testified, that all the expenses approved by Genero were incurred by him, that he initiated?

A They were incurred by Captain Genero, approved by Captain Gibbs for the underwriters, and approved by me for the underwriters (owners).

Q You mean by incurred, you say the owners incurred the expense?

A Captain Genero was authorized to raise that vessel, to superintend the raising, all the raising operations.

Q By whom.

A By the owners and underwriters representatives.

Q How do you know he was authorized by the underwriters.

A By the action of Captain Gibbs.

Q That is all you know about it?

A Yes sir.

Q He was also authorized by the owners?

A Yes, through me.

(Testimony of witness closed).

Hearing adjourned, to be resumed by agreement of Proctors.

Seattle, Washington, December 6, 1910.

Continuation of Proceedings.

PRESENT: Mr. Campbell and Mr. Kerr, for the libelant.
Mr. Gorham, for the Respondents.

FRANK G. TAYLOR, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q (Mr. Campbell). Where do you live?

A Seattle.

Q What is your business?

A Marine Insurance.

Q What company do you represent?

A Fireman's Fund Insurance Company, of San Francisco.

Q How long have you been engaged in the marine insurance business?

A Fifteen years.

Q Whereabouts?

A Tacoma, Seattle.

Q Approximately what volume of Marine Insurance do you write in your office here, a year?

A You mean premiums?

Q Give it both in premiums and in valuation?

A We wrote twenty-three millions last year in volume. Premiums \$183,000.

Q Can you give us approximately the proportion of hull insurance in that total of twenty-three millions?

A No, I could not; I could not separate it.

Q Well, as far as your recollection of your business goes at the present time, how large a hull business do you write?

A I should say about a half of that.

Q On what classes of vessels.

A All classes of vessels.

Q What are the various steamship vessels doing business on Puget Sound that you cover?

A Well, I have covered pretty nearly all of the vessels out of Puget Sound at times.

Q Are you familiar with the so-called San Francisco form of the hull time policy?

A Yes sir.

Q Are any of these vessels on Puget Sound covered by the policies?

A Yes sir.

Q Is it customary for the marine underwriters on the Pacific Coast, to hold vessels covered while laid up which are insured in the San Francisco form of the Hull Time policy, when there is no provision in the policy for the return of the premium?

MR. GORHAM. I object as immaterial and not addressed to the issues in this case. If counsel desires to interrogate the witness in reference to the policy itself in issue, I have no objection.

A I should say it was.

Q Has that been your experience or not?

MR. GORHAM. I renew my last objection.

A It has been my experience.

Q I hand you libelant's exhibits "F," "G" and "H," and ask you whether or not these policies are the so-called San Francisco Hull Time Policy?

A I would say that they were.

Q What would be your answer to the question previously propounded as to the custom with reference to a vessel insured under these policies?

MR. GORHAM: Which particular question?

MR. CAMPBELL: The question I asked with reference to the custom on this coast, where there is no provision for return of premium, and no demand made.

A You are talking of course about my own office?

Q I ask what your understanding of the custom is?

A We would consider that they held covered.

Q How does the volume of business done by the Firemen's Fund Insurance company on this coast compare with the total Marine insurance written by companies having offices on the coast.

A That is a rather difficult question to answer. According to the reports made to the Insurance Commissioner, our volume of premiums shows \$183,000.

Q That is in this State, through your office?

A Yes. As against the total for authorized and unauthorized companies of \$521,000.

Q How many other companies are there in that list of authorized and unauthorized?

A About twenty five.

CROSS EXAMINATION.

Q (Mr. Gorham). When you testified on your direct examination, in answer to interrogatories by counsel, that under these particular policies, exhibits "F," "G" and "H," you considered the vessel covered while laid up, had you prior to that time, examined particularly each of these policies, to see the terms and conditions and endorsements on the policies?

A Nothing only as to the form of the policy.

Q That is the printed form?

A The printed form of the policy.

Q That is excluding any endorsements that might be on?

A Certainly.

REDIRECT EXAMINATION.

Q (Mr. Campbell). I will ask you to examine these policies closely, Mr. Taylor.

A And what?

MR. CAMPBELL: I presume you will admit, Mr. Gorham, that the three policies are the same except as to amounts; the provisions of the policies are the same?

MR. GORHAM: I think they are practically identical, with the exception of the amounts in the case.

Q I want you to read them over, so that you know what the policies contain. And then I have another question to ask you.

A All right.

Q Now leaving out of consideration the endorsement which appears on this policy, the vessel warranted employed in the general passenger and freight business on Puget Sound within a radius of thirty miles from Seattle; not considering that, leaving that out of consideration, this warranty endorsed on this policy, I will ask you whether or not, under the custom prevailing among marine underwriters on this coast, of which you have testified, that the vessel insured by this policy would be held covered while she was laid up?

MR. GORHAM: I object. He has not testified there was such custom. He testified his company would so consider.

Q (Question read to witness). Leaving out of consideration that endorsement on the policy.

A I would say it would be customary to hold that vessel covered while she was laid up under that policy.

Q That is in accordance with the custom of marine insurance on this coast, as you understand it?

A That is what I would say, as I understand it.

MR. GORHAM: I move to strike the testimony with reference to custom, because there is no special custom pleaded, and the action is brought on a written contract.

MR. CAMPBELL: I desire the record to show that application will be made in due course, to amend the pleadings, so as to show the custom?

Q (Mr. Gorham). Do you mean, Mr. Taylor, that your company would pay a loss voluntarily under such conditions as has been put to you by counsel, or do you mean to say that the company would be obligated, as a

matter of law, to pay the policy for a loss while the vessel was laid up?

A I do not believe the question would ever arise.

Q Then you don't know what it would be.

A I do not believe we would ever bring the question up.

Q That is not what I ask you, whether you would bring it up.

A I will answer that another way then. I say I think they would pay the loss without question.

Q It might pay the loss without question, but would they consider themselves legally bound to pay the loss?

A I would think so.

Q Under what provision of the policy, excluding the endorsement named, would you be legally bound?

A Well, it is customary for all vessels to lay up for repairs or for overhauling. It is a custom to allow a certain proportion of the premium to be returned to the assured, by reason of the vessel having been laid up, because after, as a rule, we consider the vessel is a better risk and is not subject to the same risk laid up.

Q It is a different risk.

A It is a different risk, yes.

Q Now, when they want to lay up, to get a rebate or return of premium, they make application, don't they?

A Under the San Francisco form of policy they make application.

Q They give notice of laying up, don't they?

A In order to get premiums?

Q Yes.

A They should have to give notice.

Q It is usual to give notice in order to avail themselves?

A It is usual to give notice that the vessel is laid up in order to get the return.

(Testimony of witness closed).

CAPT. FREDRICK WARNER, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q (MR. KERR). State your name?

A Fredrick Warner.

Q Where did you reside in December 1907?

A Seattle.

Q What is your occupation?

A Master Mariner.

Q How long have you been a master mariner, captain?

A Oh, about 16 years, I guess.

Q How long have you followed that avocation in and about Puget Sound waters and the Pacific ocean?

A Well, I have followed that on the coast here that length of time. Been altogether here twenty three years.

Q Name some of the vessels of which you have been master?

A The Ohio, Oregon, Pennsylvania, the C. D. Lane, the Blanchard, and others.

Q Were you acquainted with the stern wheel steamer Vashon?

A I was.

Q Did you have anything to do with the mooring of the Vashon about the 1st of December 1907, in the Duwamish river.

A I did.

Q What did you have to do with the laying up of that vessel, captain?

A I went up and moored her; superintended making her fast.

Q Captain, I call your attention to a blueprint purporting to be a map of township 24 north, range 4 east, King County, and purporting to show the location of the Duwamish river with reference to Elliott Bay. And I have had it marked libelant's exhibit J for identification. I will ask you to indicate on that blueprint at about what

place in the Duwamish river you moored this vessel. Mark it with the letter M?

A This is the place right here in this bend.

Q At the point you indicate on this blueprint with the letter M, right below the figures "30"?

A Yes, that is it right here.

Q How did you take her up, captain, with a tug?

A Towboat, yes sir.

Q Under whose direction was the steamer moored there in the Duwamish river?

A Under mine.

Q I find in the proofs of loss with reference to this steamer, an affidavit to which I call your attention, which I have had marked libelant's exhibit K for identification, purporting to be your own affidavit. Is that your signature to that affidavit?

A Yes sir.

Q Did you make that affidavit for the purpose of it becoming a part of the proofs of loss?

A Yes sir.

Q Attached to this affidavit, captain, I find a diagram in lead pencil, purporting to be a diagram showing the manner in which the vessel was moored. Did you prepare that diagram?

A I did.

Q Is that a correct diagram showing the mooring of the vessel in the Duwamish river?

A Yes sir.

Q The bend of the river indicated on that diagram, is the bend of the river marked by the letter M on exhibit J the blueprint, to which I call your attention?

A Yes sir.

Q Will you now state to the Court, captain, if you please, the exact manner in which you moored the vessel?

A Well, there were piles driven up there, I should

judge about 20 feet from the bank. I took her up alongside these two piles, and I put out forward, two bights around the pile forward, of the forward chock, and the same in the aft chock on the starboard side. Then I ran an anchor out from the port bow, out in the stream with a four and a half inch line on, and I ran another line ahead to a pile over the starboard bow.

Q What was the size of that line?

A That line was a five inch.

Q What was the size of the lines that you fastened to the piling aft?

A They were five inch.

Q What condition were they in?

A Good condition. The lines were good.

Q Captain, about what is the rise and fall of the tide at that point in the Duwamish river?

A About nine or ten feet.

Q What was the stage of the water in the Duwamish river at the time you moored this vessel?

A It was about three quarters flood.

Q And what was the depth of water in which she was moored?

A We had 18 feet.

Q About what did the vessel draw?

A She was drawing then about three feet and a half.

Q And it was about half tide when you moored her?

A It was more than half tide.

Q Was she moored, in your judgment as a master mariner, in a safe manner?

A Yes, she certainly was. I ran a line aft to the pile from the starboard quarter, which came in shore, to the pile right astern. I ran another line from the port quarter right to that same, and would leave that in a straight line with the line of the ship. And one from the starboard quarter lead over toward the port side of

the steamer's stern, so that it all had a tendency to keep her off from the piles as much as possible.

Q How were these lines fastened on the vessels?

A Chocks. Forward they were fast in the chocks, and she had good chocks in her—some call them bits—

Q Were these lines fastened under your direction?

A Yes sir.

Q Did they allow for the movement of the tide?

A The only lines we had to allow for the motion of the tide were the lines we sent around the pile, the bight, they were slack enough to slip up and down the pile.

Q Did you leave anybody, captain, in charge of the vessel as watchman?

A Yes sir.

Q What was his name?

A Faber.

Q Where did he reside with reference to the place the vessel was moored?

A He lived about 200 yards astern of the ship, in a boat house there.

Q He was operating a boat house there?

A Yes, his boat house was there and he lived there, and he had a couple of men working there.

Q Were there any other vessels moored in the vicinity of her?

MR. GORHAM: I object as immaterial.

A Yes, there were schooners around there. The Venus a little ways to the stern of the brick yard there.

Q Was that, in your judgment, a safe place in which to moor the vessel?

A She was in the bend there and did not catch the full force of the tide there.

Q Do you remember of a heavy gale of wind blowing from the south about the 4th of December, three days after you moored her?

A Yes, we had a couple of heavy gales about that time.

Q About what was the velocity, do you remember, in your judgment?

A Well, they climbed up over sixty odd miles an hour.

Q Did you see this steamer again on the morning of the 15th of December?

A I don't exactly remember the date. Somewheres around there, I went out.

Q Is the date correctly specified in that affidavit, subscribed and sworn to on the 20th day of December 1907?

A Yes, it would be right at that time.

Q The 15th.

A Yes.

Q What was her condition as to being moored in good shape on the morning of the 15th of December, the last time you saw her before she sank?

A Why, the last time I saw her before she sank she was all right. Everything was intact.

Q Do you remember how long it was after that visit to her that she sank, did you learn that she sank?

A Well, I don't know, two or three days, possibly. I do not remember exactly.

Q She sank on the 16th.

A Yes, somewhere there. The next day then, I guess.

Q Were you there the afternoon of the 16th with Mr. Walker?

A Yes sir.

Q After she had sunk?

A Yes sir.

Q What condition you find her then, Captain?

A Well, I found her down by the head; the lines had been let go.

Q Were any of her lines—

A Some, of course I could not say, because they were

under water. I noticed some of them aft had been let go. Whether they done that after she sunk I don't know.

Q Did you return again on the night of the 16th with Mr. Walker and Captain Gibbs, to go aboard of her?

A Yes sir.

Q What was her position then?

A Same position when the tide was down. Could not see anything on the deck, because they were under water, the main deck.

Q Did you observe her lines then?

A No more than I did the first time.

Q Did you have anything to do with her captain Warner, after she sank?

A No sir.

Q Now, have you at any time observed, and to what extent, if any, these lands about the place where this vessel was moored, were flooded, if at all, at high tide?

A The only time I ever noticed them flooded was when there had been a big freshet.

Q Were the lands on either side of the river diked there?

A No, they were not diked. When there was a big tide there it was just up to the bank.

Q At extreme high tide was this land flooded there around where this vessel was moored?

A No.

Q To no extent?

A Not that I saw when I was there.

MR. GORHAM: I object as leading.

Q Were you ever up there at extreme tide so that you could observe the extent, if any, to which this land might be flooded with water?

A Oh, I have seen it flooded at the time of the freshets, that is all, it is flooded all over then.

Q Have you been up in that vicinity at other times?

A Yes sir.

Q Well, what is the character of this land at the point and below the point, about the point where this vessel was moored, as being tide land or not?

MR. GORHAM: I object as immaterial..

A I would not consider that was tide land. When it came over at the bank, well I never seen it come over the bank there.

CROSS EXAMINATION.

Q (Mr. Gorham). You say there were a couple of gales of wind. When was the first gale that you refer to?

A Well, one followed the other within a couple of days, third or fourth.

Q I mean when was the first, with respect to the time you moored the vessel there, on the same day or the day or the day after?

A After I moored her?

Q Was it after she was moored that the first gale came?

A Yes, it blew a hard gale after we moored her.

Q What time after you moored her, one, two, three days or a week, or when was it?

A As far as my recollection serves me, I think it was about three days, something like that.

Q What direction did the wind blow?

A South east; south. Southeast, south, veered around toward the southwest.

Q When had it reached the highest velocity, in the west?

A Well, I would not be sure about that. I think it was when it was in the south.

Q How long after that first gale was the second gale that you refer to?

A One followed the other pretty close, about a day, I think it was.

Q And what direction did the wind blow from then?

A Same direction.

Q What direction was it blowing when it reached its highest velocity?

A It was from the southward. I cannot say whether it was south, southeast or southwest, but from the southward though.

Q What is the topography of the country immediately to the west of the place where you have marked M on this plat?

A Well, the west would be more up and down.

Q What is the topography of the country immediately west assuming that north is where I have marked N on the plat, what is the country immediately west of M?

A West there would be up and down stream.

Q What is the topography of this country?

A It raises up gradually a kind of a hill.

Q What height does it raise?

A That I would not say.

Q Two or three hundred feet?

A Enough to make quite a little shelter there.

Q You don't know how high that bluff is there?

A No, I do not know.

Q In your affidavit you have a plat attached, and on that plat you have got this place marked "Brick yard" down stream from the Vashon?

A Yes sir.

Q Now is there not a high bluff—

A There is a high bluff back of the brick yard.

Q And that extends north and south to what extent?

A I do not know how far, but—

Q It runs half a mile or a mile, don't it?

A Yes, there is quite a shelter there I know, where the boat was moored, when the wind is from the southward.

Q So the blowing of this gale did not affect this vessel?

A No, she did not blow adrift.

Q You did not attribute her loss to the effect of the gale?

A No, because she was all right after the gale.

Q When you say all right, you mean in respect to her moorings?

A Yes, because I spoke to the watchman to look after her and he told me she was all right.

MR. GORHAM: I move to strike what the watchman said, as not the best evidence, and heresay.

Q Do you know of a third gale blowing, subsequent to the second gale, and before the vessel was lost or wrecked, or were there only two gales?

A There were two, to the best of my recollection.

Q You were the Port Captain of the Independent Transportation Company?

A No, I was working for the Chesley Tow Boat Company at that time.

Q But were engaged by the Independent Transportation Company to moor this vessel?

A Yes sir.

Q The Chesley tow boat company took her up the river?

A Yes sir.

Q She had been lying at the Chesley wharf just before that?

A Yes sir.

Q How long had she been lying there?

A I don't exactly know; a month or six weeks.

Q Out of commission?

A Yes sir. She was laid up. I do not exactly remember the time. I would not state positively.

Q You say Faber was a boat house man?

A Yes, he owned the boat house.

Q Lived in it?

A Lived in it.

Q How many men did he have with him?

A He had two working for him at that time.

Q How long did it take you to moor the vessel after you arrived there?

A Oh, I think I was about two hours, or two hours and a half.

Q How soon after the expiration of the two hours and a half did you leave there, after mooring the vessel?

A I left right away when she was moored fast.

Q That was on the 3rd of December?

A Yes sir.

Q And when did you next visit that vessel?

A Well, I don't know exactly when it was, but I used to have occasion to go up the river several times to the brick yard, and I used to take a look at her.

Q How many times did you go up after the 3rd?

A Before I went there after she was sunk?

Q Yes, between the time you moored her and the time she was sunk?

A I should judge four or five times.

Q How close to the vessel?

A I went aboard of her.

Q How many times did you go aboard of her?

A I went aboard at least three times.

Q How did you go there, in a launch or tug?

A No, I used to walk around until I got to the boat house, and then I would get a boat from Faber.

Q How long a time did you remain each time you were there, approximately?

A Oh, 15 or 20 minutes.

Q Did you ever visit her more than once a day during these times?

A No.

Q So that all you know about the vessel and her condition after you moored her, and after you had gone away on the day that you moored her, was what you saw upon these particular visits that you are referring to?

A Well then, outside of that I would get a report.

Q I am asking about what you personally saw?

A I personally saw she was all right.

Q That is all you know about the vessel and her surroundings and her care, is what you saw yourself.

A Yes.

Q I am now referring to your own personal knowledge.

A Yes sir.

REDIRECT EXAMINATION.

Q (Mr. Kerr): Did the parties left in charge of the vessel, report to you from time to time as to her condition?

A Oh yes.

(Testimony of witness closed).

MR. KERR: I offer in evidence these two identified exhibits.

Papers marked libellant's exhibits J and K filed and returned herewith.

MR. KERR: I have offered in evidence the policies, the affidavits of Warner and Faber; the certificate of registry. And

It is stipulated that the notice of abandonment, the originals of which are attached to the respondents exceptive allegations. The list of damages attached to respondents exceptive allegations, and the three original orders for payment; and the three original letters of transmittal; the proofs of loss attached to respondents

exceptive allegations, may be considered by the court, as a part of our testimony of the proofs of loss, with the same effect as though produced and offered again. I have also offered the surveyors report which is in evidence. And the court may also consider the affidavit of Shay, a copy of which is set forth in the exceptive allegations of the respondent. The Independent Transportation company certifying the correct list of all the insurance on the steamer on the 15th of December, 1907, at the time she sank in the Duwamish river. This is for the purpose of avoiding the calling of Mr. Shay as a witness.

(Hearing adjourned. To be resumed by agreement of proctors).

Seattle, Washington, March 15, 1911.

Continuation of proceedings pursuant to agreement.
PRESENT: Mr. Kerr, for the Libellant.

Mr. Gorham for the Respondents.

GERALD LOWE, a witness called on behalf of the libellant, being duly sworn, testified as follows:

Q (Mr. Kerr). State your full name to the Court?

A Gerald Lowe.

Q What is your business, Mr. Lowe, and what has it been for the last number of years?

A Average adjuster and Insurance broker.

Q With what firm are you connected?

A Johnson & Higgins.

Q How long have you been connected with that firm?

A Since 1900.

Q How long have you been connected with that firm in the city of Seattle?

A Since 1903.

Q Have you had experience during all that period of time in adjusting marine losses?

A Yes sir.

Q Did you act for Johnson & Higgins in attempting to adjust the loss in this case?

A Yes sir.

Q Did you attend to the matter of giving notice to the insurers in this case?

A Yes sir.

Q I call your attention to some documents which I will have marked as libellant's exhibit L for identification, purporting to be one of the original notices of proofs of losses, sent by Johnson & Higgins by yourself, directed to J. M. E. Atkinson, agents of the Yang Tsze Insurance Company, limited, bearing date of April 15, 1908, and will ask you if this is one of the original notices of abandonment given by you, as average adjuster of the loss sued on?

A It is.

Q Was the same character of notice, the same language, given to each of the other Insurance companies?

MR. GORHAM: I object as immaterial, for the reason that the Court has held as the law of this case that the abandonment came too late.

MR. KERR: Independent of that question, will you have any objection to my offering carbon copies of the notices of abandonment, without demanding—

MR. GORHAM: I will agree they were all similar, as far as that is concerned, except as to the amount.

Q Attached to that exhibit is a letter under date of April 17th, directed to you by the Canton Insurance Office, limited. Did you receive that letter in response to the service of notice of abandonment?

A Yes sir.

Q I hand you as part of the same exhibit an affidavit dated April 17th, 1908, purporting to have been executed by A. B. Shea, before Ira A. Campbell, a notary public. Was that one of the original affidavits showing the amount of insurance on the vessel?

A Yes sir.

Q Was that affidavit served with the other proofs of loss upon the insured in each of these cases?

A Yes sir.

Q Did you make any application, Mr. Lowe, at any time, to these respondents for consent to make sale of the vessel?

A Yes sir.

Q Do you remember about the date with reference to August 10th, 1908, when you received the letter from Mr. Mason, bearing that date.

A Yes sir.

Q Calling your attention to certain letters and copies of letters, which I have had marked for identification libellant's exhibit M, I will ask you whether the letter of July 30th, 1908, was sent to each of these Insurance companies, whether the phraseology of the letter, except the figures, are the same in each case?

A Yes sir.

Q Calling your attention to certain carbon copies attached to the letter of July 30th, to the Yang Tsze Insurance Association, bearing date July 29th and July 27th, and whether these carbon copies were attached to these original letters of July 30th, mailed by you to each of the insurers?

A Yes sir.

Q Now I call your attention to a carbon copy of a letter bearing date August 3rd, 1908, directed to the Underwriters of the steamer Vashon, I will ask you if mailed the original of each of these, that is to each of these three insurance companies or their agents?

A Yes sir.

Q About that date?

A Yes sir.

Q I call your attention to original letters from Atkinson & Company, dated August 6th, and from Tomlinson, acting agent of the Yang Tsze Insurance Association of the same date, and an original letter dated August 10th, 1908, signed by J. R. Mason. I will ask you if these letters were received by Johnson & Higgins in response to the correspondence to which your attention has been called?

A Yes sir.

MR. KERR: I offer these two exhibits identified by the witness in evidence.

Papers marked libellant's exhibits "L" and "M" respectively, filed and returned herewith.

Q Calling your attention to the last exhibit under date of August 7th, 1908, directed to W. W. Tomlinson, a letter of August 11th, 1908, directed to Waterhouse & Co., agent of the Canton Insurance Company, I will ask you if these are correct copies of the original letters that you mailed these people on that date?

A Yes sir.

Q How soon, Mr. Lowe, after this vessel sank in the river was your attention called to her, and how frequently did you see the vessel after that time?

A My attention was called to the loss immediately. I never saw the vessel.

Q How frequently were you aboard the vessel after she was raised?

A I was not aboard the vessel.

Q Did you have anything to do in connection with Captain Gibbs in negotiating a sale of this vessel in the month of August 1908?

A Yes sir.

Q What did you do in connection with that?

A I endeavored to secure the underwriters consent to the sale.

Q Were you able to procure the consent of these respondents in this case, the Canton Insurance Office, limited, The China Traders' Insurance Company, limited, and the Yang Tsze Association, limited?

A No sir.

Q What did you and Captain Gibbs do with reference to an attempt to sell this vessel, what negotiations did you have?

A I do not know exactly what Gibbs had to do with the sale. My efforts were confined to procuring and endeavoring to procure the consent of all parties.

Q Did the other co-insurers consent to the sale of the vessel?

MR. GORHAM: I object as irrelevant and immaterial.

A Yes sir.

Q What was the value of the vessel in her then condition with reference to the price at which the vessel was to be disposed of?

MR. GORHAM: I object as incompetent. The witness says he never was aboard the vessel, and he is not competent to testify.

A About \$750, that is the damaged value.

Q Were you familiar with the value of the vessel in the condition in which she was in at that time?

A No sir.

Q Market value?

A No sir.

Q What the ship was worth in the market?

A No sir.

Q You left that to the surveyors?

A I did, yes.

Q During your experience, Mr. Lowe, in marine insurance business, have you become familiar with the San Francisco hull time policy?

A Yes sir.

Q You have examined these policies exhibits F, G, H?

A Yes sir.

Q I will ask you to state to the Court whether that is the San Francisco hull and time form of policy, aside from the endorsement?

A That is.

Q Can you state to the Court approximately the volume of business transacted here in Seattle by Johnson & Higgins yearly?

A Premiums?

Q Yes sir, about what premium?

A Oh, about \$250,000.

Q Do you know of a custom prevailing among underwriters on this coast with respect to holding vessels covered under the San Francisco hull time policy, while vessels are laid up?

A Yes sir.

Q Under the San Francisco hull time policy, I will ask you whether or not it is customary among underwriters on this coast to hold a vessel covered while laid up without notice of such laying up having been given to the underwriters and the consent to such laying up obtained, where there is no return premium for laying up provided for, nor inspection to be made by the insurance, or not?

A Yes.

Q What is that?

A The custom is to hold the company.

Q Was there any objection ever made to you by any of these respondents in this suit, about the form or character of notice of abandonment?

A No.

Q Or of the proofs of loss that were furnished them by you as adjuster having charge of the adjustment of loss?

A No.

Q Did you furnish each of them with proofs of loss?

A Yes sir.

Q Did you ever get any other response from any of them than that contained in the letters to which your attention has been called here, in which they denied liability?

A Yes sir.

Q What response was that?

A There are some letters.

Q Referring to these losses?

A Yes.

Q The earlier letter to which you refer is the letter of April 10th, 1908, directed to you by J. R. Mason, manager of Frank Waterhouse & Company, incorporated?

A Yes sir.

Q Your letter which I have had marked for identification libellant's exhibit "N," had reference, did it not, to an agreement, the original of which is attached to it, in which you requested these companies to sign?

A Yes sir.

Q Now did you receive any other letters referring to the adjustment of the loss of this vessel, from any of the respondents, other than those that have been identified here, of which you have any knowledge?

A No.

Q Were any objections at any time made to Johnson & Higgins, or to you, going to the character or extent of the proofs of loss, or the notices of abandonment that was given to you or orally by any of the agents of the parties?

A No sir.

MR. KERR: I offer these papers last identified in evidence. Papers marked libellant's exhibit "N," filed and returned herewith.

CROSS EXAMINATION.

Q (Mr. Gorhom). You say you were notified immediately after the loss of the vessel, of its loss?

A Yes sir.

Q Do you remember when the loss occurred?

A I think it was on the morning of December 16th, 1907.

Q And what was the date of this notice of abandonment?

A As near as I can recollect it was April 15th.

Q Do you know why four months had elapsed between the date of the loss and the notice of abandonment? What was the occasion of the delay?

A An effort to ascertain whether or not the vessel was a constructive total loss was the occasion of the delay.

Q Was that the only reason?

A So far as I know.

Q Do you know when the vessel was floated?

A She was floated about a month after she sank.

Q Do you remember when she was hauled out and cleaned?

A She was hauled out and cleaned the same month she was floated, the end of January 1908.

Q And how long would it then take after she was hauled out and cleaned, to ascertain the extent of the damage or loss?

A How long would it take?

Q Yes sir.

A Well, it did take until April.

Q Why did it take until April?

A The principal difficulty was that it was impossible to get the agent, surveyor of the Underwriters, to say what the damage was.

Q Why could you not have your own surveyors and abandon this without respect to the Underwriters surveyor?

A It is our practice to get the Underwriters surveyor to join with our surveyor, so that the question of proof on that point is eliminated. We go to great length to get the two parties to act together.

Q When they decline to come, what do you do, act independent?

A Then we have the owners surveyors state what the damage is.

Q Why did you delay from the last of January until the middle of April before making an abandonment of a vessel the damage of which was apparent to you on the last of January, she being at that time hauled out on the ways.

A Because the Underwriters surveyor did not decline to state what the loss was. He finally acted.

Q Was there no other reason, Mr. Lowe, for the delay in the abandonment?

A Not so far as I know.

Q I show you a letter dated August 10th, 1907, addressed to Frank Waterhouse & Company, signed by Johnson & Higgins, by you. Is that your handwriting at the bottom of the letter, your signature?

A That is my writing throughout.

Q That letter was sent to the addressee?

A Yes sir.

MR. GORHAM: I desire to have this letter identified.

Paper marked respondent's exhibit "1" for identification.

Q What was the purpose, on August 10th, of the request contained in this letter?

MR. KERR: I object as incompetent, irrelevant and immaterial and long antedating the loss of the vessel.

A For fear that the Katalla company might have a possible interest in the boat, I wished to cover all interests.

Q Why did not you cover the Pacific Coast company's interest?

MR. KERR: I object as not cross examination and as incompetent, irrelevant and immaterial.

A I did not fear they had any.

Q What reason had you to suspect that the Katalla Company had any interest?

MR. KERR: I renew my last objection.

A I was informed that it might have.

Q Were you not informed that they actually had an interest by the assured?

A No sir.

Q The Independent Transportation Company?

A No sir. That note is an extraordinary precaution on my part for fear that in the most remote contingency they might have an interest, I drew that up.

Q Were you not advised prior to the date or the writing of this letter, August 10th, 1907, by the Independent Trans-

portation Company, that they had made a sale to the Kattalla Company of the steamer Vashon, and of their interest in the steamer Vashon?

MR. KERR: I renew my last objection.

A No, not that they had made a sale.

Q Were you advised with reference to the pending sale at that time?

MR. KERR: I renew my last objection.

A A possible sale.

Q Were you not advised on or about the 8th of August and prior to your writing this letter of August 10th that the sale had been consummated and that the vessel had been actually delivered?

A No.

Q Were you not so advised by the Independent Transportation Company or some of their agents?

MR. KERR: I make the same objection.

A No sir.

Q Did you address similar letter to the letter of August 10th, 1907, to the other respondents or their agents in this particular litigation, that is to the China Traders and to the Yang Tsze?

A Yes sir.

Q Did they make any answers to these letters?

A My recollection is that they accepted the notice.

Q Will you produce the letters, please.

MR. KERR: I make the same objection.

A I haven't them here.

Q Will you bring them, produce them so that I may have them before the Commissioner?

A Yes, I will.

Q Did each one of them notify you that they would comply with the request, or only one or more?

A My recollection is they all three did.

A Not so far as I know.

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A I haven't them here.

Q Will you bring them, produce them so that I may have them before the Commissioner?

A Yes, I will.

Q Did each one of them notify you that they would comply with the request, or only one or more?

A My recollection is they all three did.

Q Then what happened?

A I went away then, and the rest is only heresay. My superior relieved me and withdrew the request.

Q He withdrew the request?

A Yes sir.

Q After it had been granted?

A That is my recollection.

Q Now is it not a matter of fact, Mr. Lowe, that the underwriters declined to comply with the request?

A I am not sure.

Q And after the declination on the part of the Board of Underwriters, that then on August 14th the request was withdrawn? Is not that the fact?

A My recollection is that we had the consent, either verbally or in writing of the companies, and my superior withdrew the request after I left for New York.

Q Who was your superior?

A Mr. W. H. Leboynaton.

Q I show you a letter dated August 16th, 1907, coming from Johnson & Higgins office, Seattle. Is that the withdrawal of the request that you refer to?

A Yes sir.

Q And a similar letter sent to each of the respondent companies in this case?

A That I do not know. I left for New York.

Q Would the copies be among your files?

A Yes sir.

Q In the Seattle office?

A Yes sir.

Q Will you please examine your files and produce them before the Commissioner?

A Yes sir.

Q Now what would be the effect of a request, the request of August 10th, the granting of the request by the Under-

writers, as you say they did, and the withdrawal of the request of August 16th?

MR. KERR: I object as incompetent, irrelevant and immaterial and not proper cross examination.

A Effect in what way?

Q What would be the effect in the granting of the request. To make the underwriters liable to the Katalla company in the event of loss and they had an interest?

A Yes sir.

Q Then what would be the effect if they granted that request and then the request was subsequently withdrawn?

MR. KERR: I object as incompetent.

A I should think the Katalla interest would not be covered.

Q At the time of indicting the letter and mailing the letter of August 16th, 1907, withdrawing the request were you acting for the Katalla Company?

A No sir. That was the reason my superior withdrew the request.

Q On August 10th at the time you made the request, were you acting for the Katalla Company?

A At no time was I acting for the Katalla Company.

Q At whose instance then did you make the request of August 10th?

MR. KERR: I object as incompetent.

A As the servant of the Independent Transportation Company.

Q Did you know of the existence of a lawsuit upon the part of the Independent Transportation Company against the Katalla Company, in the United States Circuit Court, to recover the purchase price of an alleged sale of the Vashon by the Independent Transportation Company to the Katalla Company, in the latter part of 1907 and the early part of 1908?

MR. KERR: I object as incompetent and as not proper cross-examination.

A I do not know of any actual suit.

Q You mean you had not any personal knowledge of it?

A I had no personal knowledge of the filing of papers or whatever you call it.

Q But you were advised by the Independent Transportation Company that such litigation was pending?

A No.

Q Had no knowledge of it?

A Not of any actual litigation.

Q What knowledge did you have with reference to it?

A The same as I said before, that there was a question that they might have some interest. Whether it even went to law or not I do not know.

Q You say some interest, would that be 100 per cent. interest in the vessel or only as part owner or what kind of an interest?

A I do not know.

Q Were you not in consultation with Charles H. Hamilton in reference to the matter of the litigation subsequent to the loss of the vessel?

A Only in that he asked me if there was any possible other interest there and told me to try to cover it under these policies.

Q I am now speaking after the loss of the vessel.

A No.

Q When it became necessary then to abandon or give proof of loss, you had no consultation with the officers or agents of the Independent Transportation Company, with reference to the litigation against the Katalla Company?

A No.

Q Did the Independent Transportation Company, by their direct instructions or otherwise, secure a delay of notice of abandonment, the notices that have been offered in evidence here by the libellant?

Q Did they secure delay, the Independent Transportation Company?

Q Yes?

A Yes.

Q By instruction—did they instruct you to delay the notice of abandonment?

A No.

Q Then in what way did they secure this delay?

A I kept pressing them for Captain Gibbs report as to what her damage was. They told me that they could not get it, so they did secure the delay.

Q Now is it not a fact that after the vessel had been floated and cleaned, hauled out and cleaned the negotiations were entered into by your office looking to the sale of the vessel, then negotiations being before the notice of abandonment?

A Yes sir.

Q And were you not, on behalf of the libellant, negotiating for a settlement by particular average, prior to the notice of abandonment?

A No.

Q You were not?

A No. sir.

Q You are positive about that? Are you positive in your memory, do you think you remember well about that?

A Yes sir.

Q Then it was only negotiations for the sale of the vessel, and not negotiations for settlement of the loss that was pending, before the notice of abandonment was given?

A By particular average?

Q Yes, by particular average.

A It might strictly be called particular average. My object was, instead of measuring the cost of the claim of the underwriters by the repairs, which is the usual particular average method, I tried to measure it by comparison of what the boat was worth sound and what she was worth damaged, and my negotiations looking to a sale—was not a real sale of her but to find out a bid for her in her damaged condition.

Q That was for the purpose of ascertaining the particular average?

A And depreciation.

Q Looking to a settlement of the contract of insurance?

Q And these things were carried on prior to the notice of abandonment.

A Yes sir.

Q Now did you know that on the 9th day of April, 1908, a week before the date of the notice of abandonment, the litigation that I have referred to, between the Independent Transportation Company and the Katalla Company, was dismissed?

A No.

Q Were you advised by the Independent Transportation Company or its officers or agents, of that fact?

A No sir.

Q Did you know it in any other manner, by any other means?

A No, I never knew of any litigation.

Q Did you ever know or hear that the Katalla Company paid the Independent Transportation Company five thousand dollars?

MR. KERR: I object to all this testimony as incompetent, irrelevant and immaterial and not proper cross-examination.

Q On the transaction between them relative to the sale of the Vashon?

A No.

Q Or any other sum?

A I may have heard they paid them some sum as a rumor. I do not remember.

Q Now is it not a fact, Mr. Lowe, that the reason that the notice of abandonment was given as late a date as April 15th, 1908, was because of the litigation pending in the United States Circuit Court, wherein the Independent Transportation Company claimed twenty five thousand dollars and some odd cents, for an alleged sale of the Vashon

to the Katalla Company, and the Independent Transportation Company was not in a position in the court to allege an absolute sale and before the underwriters to claim an absolute loss?

MR. KERR: I want the record to show that I have no objection to counsel making Mr. Lowe his own witness for the purpose of his own case, but I shall insist that in all this examination with reference to matters taking place with the Katalla Company, counsel is making Mr. Lowe his own witness, and will be bound by his testimony. Otherwise I object to the same on the ground that it is wholly incompetent, irrelevant and immaterial and not proper cross examination.

MR. GORHAM: The whole matter goes to the reason for the delay in the notice of abandonment and proof of loss.

A What reason the owners had for not letting it go ahead I do not know, but I was pressing them for this estimate of Gibbs and did not get it until about the 15th of April—that paper was made from the survey, and my notice of abandonment.

Q I will ask you, Mr. Lowe, in reference to the custom of allowing insurance while a vessel is laid up, concerning which you testified, under the San Francisco hull and time form of policy, in giving your testimony you excluded from consideration the endorsements made upon libellant's policies which are exhibits in this case?

A Excluding the endorsements, yes.

Last letter identified by the witness marked respondent's exhibit "2" for identification.

REDIRECT EXAMINATION.

Q (Mr. Kerr): Calling your attention to the letter of August 16th, 1907, respondents identification "2", which is a letter from the office of Johnson & Higgins to Waterhouse & Company, withdrawing the former request made by you on August 10th in the matter of the insurance in controversy herein, I will ask you if any of these insurance companies ever objected to this withdrawal, to your knowledge?

A No.

Q Made no objection whatever?

A No sir.

Q Referring again to your testimony with reference to San Francisco hull and time policy, I will ask you if any of the endorsements upon either of these policies in your judgment, in any manner, affects the custom by which you have testified these vessels were covered while laid up?

A No.

(Testimony of witness closed).

MR. KERR: Libellant rests.

Hearing adjourned. To be resumed by agreement.

Seattle, Washington, August 16, 1911.

PRESENT: Mr. Kerr, for the libellant.

Mr. Gorham, for the respondents.

RESPONDENTS' TESTIMONY.

J. R. MASON, a witness called on behalf of the respondents, being duly sworn, testified as follows:

Q (Mr. Gorham). State your residence, Mr. Mason?

A Seattle.

Q Your occupation?

A At present insurance adjuster.

Q How long have you been in the insurance business?

A Twenty five years.

Q Whereabouts?

A Principally on Puget Sound, Port Townsend, Seattle.

Q What kinds of insurance?

A Fire and marine.

Q And in what capacities have you handled marine insurance?

A Agent for underwriters.

Q Were you at any time agent of the Canton Insurance Company one of the respondents in this case?

A I was.

Q For how long a time?

A About ten years.

Q And what was the scope of your agency and your power and authority and duty, generally speaking?

A Acceptance of risks and payment of claims.

Q Had you any superior officer over you in your agency on Puget Sound?

A No.

Q To whom did you report?

A The general agents of the company in San Francisco, Parrott & Company.

Q What was Parrott & Company, the San Francisco agents?

A They were the United States agents.

Q For what other companies did you act as agent during this time, that is, just generally?

A The Western Assurance Company of Toronto.

Q I show you libellant's exhibit "G," and ask you if you ever have seen that paper before?

A I have, yes sir.

Q Is that your signature at the bottom, J. R. Mason, agent?

A Yes sir.

Q Was the insurance referred to in this paper, exhibit "G" effected through your office at Seattle?

A Yes sir.

Q I notice that the paper "G," which is a Canton insurance Policy on the steamer Vashon, recites that it is executed the 24th day of October, 1904, and then it is countersigned by you as agent on the 5th day of July, 1907. Explain, if you can, how this policy happens to be executed under the date of October 24, 1904?

A The policies are sent to me in serial numbers, from the office of the general agent, who signed them in San Francisco on the date of their—probably on the date of issuance to me, and then upon the issuance of the policy to the assured at any time subsequent to that I countersigned it with the date of issuance.

Q Then this policy was not issued to the Independent Transportation Company on the Vashon on October 24th, 1904?

A No sir.

Q But is of date 5th of July, 1907?

A Yes.

Q The date of your countersigning it?

A Yes sir.

Q What would be the volume of your business, Mr. Mason, the marine business with the Canton Insurance Office, during the years for which you were their agent, approximately, I mean?

A It varied. As high as twenty-eight or thirty thousand dollars in a year. Sometimes less.

Q You mean in premiums?

A Yes.

Q What would be the approximate risks carried under these premiums—to get at a reasonable idea of the volume of your business?

A That would be very difficult to estimate, because a portion of that premium came at a very low rate, such as registered mail business. I suppose it would run upwards of a million, between one and two million dollars.

Q I call your attention to an endorsement on libellant's exhibit "G," the Canton policy "Vessel warranted employed in the general passenger and freighting business on Puget Sound within a radius of 30 miles from Seattle" in typewriting, and then in longhand writing "J. R. M." the initials "J. R. M." who wrote that J. R. M.?

A I did.

Q Are they your initials?

A Yes sir.

Q Now, when was that endorsement placed upon that policy, as regards the date of its execution?

A It was placed on the policy the day the policy was issued.

Q You mean by your office?

A Yes sir.

Q The 15th of July, 1907?

A Yes sir.

Q Not when it came up from the San Francisco office October 24th, 1904?

A No sir.

Q Are you familiar with the construction the assured and the underwriters place upon such an endorsement, as regards the time of its operation?

A Yes sir.

Q What is that construction?

MR. KERR: I object as immaterial.

A The clause means that the assured warrants that the vessel is not and will not, or is and will during the time of the policy, during the life of the policy, be employed as stated in the warranty of the policy.

Q State whether or not it is construed as a condition precedent to the attaching of the policy?

MR. KERR: I object as immaterial.

Q Or whether it is a condition to be in operation in future during the term of the policy?

MR. KERR: I object as immaterial.

A The condition is to be during the entire life of the policy, from the moment of attachment to the moment of expiration.

Q Is that the generally accepted construction of an endorsement in the particular language of this endorsement I have called your attention to in the Canton policy?

MR. KERR: I object as immaterial.

A Yes sir.

Q Do you remember the circumstances of the loss of the Vashon, Mr. Mason?

A Yes sir.

Q When did you first hear of the loss of the Vashon?

A My recollection is that I saw it in the newspapers the morning after it occurred.

Q Do you remember the year and month when the vessel was lost, without my calling your attention to it?

A I think it was in December, 1907.

Q Now how soon after hearing of the loss of the vessel did you take any action on behalf of the Canton Insurance Company in any way?

A I called on Captain Gibbs, I think, on the morning after the loss occurred, to inquire of him the circumstances of the loss and the condition of the vessel.

Q Who was Captain Gibbs.

A Captain Gibbs is a marine surveyor located at Seattle.

Q Is the Canton Insurance Company a member of the board of marine underwriters of San Francisco?

A I understand it is.

Q What relation did Captain Gibbs bear towards the Board of Marine Underwriters of San Francisco?

A Captain Gibbs is the accredited surveyor of the marine board.

Q Do you know what his powers and authority and duties are in such capacity?

A Well, it is Captain Gibb's duty to look after the interests of the Underwriters, in reference to marine losses that come to his knowledge in this district, and report the circumstances and conditions to the companies, and follow their instructions regarding further operations.

Q Is his authority general or does he act on instructions in each particular case?

MR. KERR: I object on the ground that the witness has not been shown to be qualified to answer the question,

or to know what authority the Board of Marine Underwriters in San Francisco gave to Captain Gibbs. This witness was not connected with that board personally.

A He would require specific instructions as to his action with reference to any matter after furnishing the board with his first report.

Q Did you give Captain Gibbs any instructions, as agent of the Canton Insurance Company, with reference to this loss after it occurred?

A Yes sir.

Q What instructions did you give him?

A I instructed Captain Gibbs to take no action on behalf of the Canton Insurance Office, or as their representative, relative to the salvage of that vessel.

Q When did you give him such instructions?

A The morning after the loss occurred.

Q Were these instructions in writing or oral?

A Oral.

Q Where were they given?

A In Captain Gibbs office.

Q Whereabouts?

A In his private room. He has two rooms. He has a general office and then a private room.

Q You mean in the Colman building in Seattle?

A Yes sir.

Q Now why were such instructions given?

A I was informed that the vessel had been sold, and that the new party did not have an insurable interest in the vessel at the time of the loss. Also, the loss occurred at a place that I did not consider covered under the terms of the policy.

Q What authority had you to give him such instructions on behalf of the Canton Insurance Company?

A It was my duty as agent of the company to do so.

Q Your agency included such authority generally?

A Yes sir.

Q Were these instructions at any time revoked by you?

A No.

Q In any way?

A No.

Q Or modified by you?

A No.

Q Did the Canton Insurance Office at any time thereafter, take any action admitting any liability under the policy?

MR. KERR. I object as calling for a conclusion of the witness, and further that the witness has not been shown to have any knowledge of the matter.

A No.

CROSS EXAMINATION:

Q (Mr. Kerr). Mr. Mason, were you employed by the Canton Insurance Company, or any of the defendants, directly, or were you employed as an agent?

A My agency was from Parrott & Company. It was confirmed by the Home office, at least the Hong Kong office of the company published my name in the list of its agents.

Q Were you employed as agent of the Canton Company to write insurance or by Parrott & Company of San Francisco?

A I was appointed by Parrott & Company in that capacity as general agent of the Canton.

Q You had no appointment directly from the Canton except as it came from Parrott & Company?

A It came through Parrott & Company.

Q You had no power of attorney from the Canton?

A No.

Q You know that Parrott & Company, being general agents of the United States, acted for the Canton through certain powers conferred upon them by written power of attorney?

A I presume they did.

Q Did you ever see the authority conferred by the San Francisco Board of Marine Underwriters on Captain Gibbs, if that authority is in writing?

A Well, if there is such authority in writing I never saw it.

Q You were not present at any time in San Francisco when the power and authority of Captain Gibbs was discussed by the Board of Marine Underwriters?

A No.

Q You have been testifying as to what Captain Gibbs' authority was simply from your supposition as to what his power and authority was?

A No, not purely supposition, Mr. Kerr. I have been interested in a number of losses where the matter has been of the disposition and handling of them was the subject of discussion between Captain Gibbs and myself and the general agents from San Francisco, who were here at the time.

Q Captain Gibbs is the representative of the San Francisco Board of Marine Underwriters, and whenever there is a loss affecting the members of that board, he acts, does he not, without direction from you as local agent, as a member of that board or the authority conferred upon him, without any request made by you?

A Well, either his acts would have to be at the request of one of the agents of a member of the board or else from a member of the board.

Q Well, you mean before Captain Gibbs could represent the San Francisco Board of Marine Underwriters he would have to go around the city of Seattle to get authority from the various local agents of members of the board?

A No, I do not mean that, Mr. Kerr. I mean this, that in case of a vessel being in any trouble, it would be Captain Gibbs' duty, and his custom and his practice, to immediately report that either to the agent here or to the Board in San Francisco, and follow the instructions that he received in reply to that report.

Q Follow the instructions received from whom? The Board of Marine Underwriters?

A The Secretary of the Board of Marine Underwriters, or follow the instructions of the agent of any member of that board.

Q Do you pretend to say that Captain Gibbs could not on behalf of the Board of Marine Underwriters undertake to make a survey or take whatever other steps that would be required in connection with a loss, that he is subject to the direction of the local agents of the various companies composing that board?

A Well, not in a matter of survey, now Captain Gibbs—

Q Any other matter connected with it?

A A salvage operation that would require the expenditure of money, Captain Gibbs would not undertake without specific authority either from the Board itself or from some agent or some member of the board.

Q You say that Captain Gibbs would go on and make a survey and make his report and then it would be up to the Board of Marine Underwriters to determine from that report, whether they would expend money for salvage purposes or not?

A Undoubtedly.

Q But up to that time he would act, as a rule, without instructions from anybody?

A Well, his action up to that time would simply be to investigate the situation and report.

Q And report the situation. And suppose he did report the situation, unless the Board of Marine Underwriters in San Francisco withdrew his authority, he would go ahead and make his report?

A No, he would await their instructions before he went ahead.

Q Do you mean to say that he would have to have instructions from a member of the Board of Underwriters that was interested before he could go ahead?

A No. He would have instructions from the Secretary of the Board who would call a meeting of the Board of

Underwriters in the City of San Francisco and discuss his report and agree upon the—

Q You mean to say the Board would do that?

A The Secretary of the Board would do that in San Francisco and would wire him instructions that would be decided upon by the Board at that meeting.

Q Now, as I understand you, you went to Captain Gibbs' office in the Colman building the morning after this vessel sank or was reported to have sunk in the newspapers, and there you instructed Captain Gibbs, so far as your company was concerned, to have nothing to do with the matter, for the reason you understood that the vessel had been sold and was not covered for that reason, and for the further reason you believed she was lost outside of the waters covered by the policy?

A Those were my reasons for giving those instructions.

Q That is the reason you went there and told him?

A Yes sir.

Q What did Captain Gibbs say to you?

A Captain Gibbs told me that he was going at Mr. Hamilton's request, and that he had told Hamilton that he was not representing the Underwriters. He told me that Hamilton had requested him, for them, to raise the vessel.

Q (Mr. Gorham). Who was Hamilton?

A Hamilton was one of the owners or owners agents. Hamilton and Schubach were managing owners of the vessel.

Q (Mr. Kerr). He told you that the morning after this accident occurred?

A Yes.

Q That he was not acting for the Underwriters but acting at Hamilton's request?

A Yes sir.

Q And yet you told him that you must not act for your company because the vessel had been sold, as you understood it, and had been lost outside of the territory covered by the policy?

A I told him he must not act for the Canton. I do not know whether I told him—

Q Why did you tell him that when he told you that he was not acting for the Marine Underwriters at all, but acting at Hamilton's request?

A Well, whether I told him after he told me that he was acting at Hamilton's request or whether I told him that before, and his statement that he was acting at Hamilton's request was a reply, I am not sure, but in either event—

Q Did you on any other occasion or any other loss, for any other company you represent in this section of the country give such instructions as that to the surveyor for the Marine Board of Underwriters in San Francisco?

A I do not know.

Q You do not remember?

A I do not remember. I may have.

Q Who told you this vessel had been sold?

A Mr. Hamilton, I think, told me at one time that they had sold the vessel to the Katalla Company, and the request came to me from the office of the broker who placed the risk with me, to accept the Katalla Company as one of the insured under the policy.

Q He requested you to transfer the risk?

A He requested me to transfer the risk or make the policy cover the interests of either party.

Q Did you do it?

A No.

Q Why did you decline to do it?

A Because the sale of the vessel to the Katalla Company would mean that the vessel would go to Katalla for employment, and I did not care to continue the risk.

Q Did the Katalla Company inform you that they were going to take the vessel to Alaska, and ask you to extend the risk to Alaskan waters?

A No, they did not ask me to extend the risk to Alaskan waters. But the broker representing the parties requested me to make that endorsement on the policy.

Q That is consent to the transfer.

A To consent to the transfer and I declined to do it.

Q You understood that if you did consent to the transfer that the vessel in order to be protected had to operate within the scope of the policy?

A Certainly.

Q What difference did it make to you whether you consented to the transfer or not?

MR. GORHAM: I object as immaterial, because they had a right if they desired, to decline to include the Kattalla Company under the risk, and the mere fact that they decided to decline to do so was sufficient, without giving any reasons at all, and therefore it is immaterial.

A I declined to make the endorsement on the policy as requested for that reason as well as the further reason—

Q For the reason given by your counsel Mr. Gorham?

A No, we had no counsel at that time.

Q Usually if a vessel is sold and the vendor and the vendee wanted one of these marine policies assigned or consent to the sale made, you did not hesitate to do it?

A Not as a rule, no. But there were several features of this case that were not acceptable to us. Of course, some three or four years ago, my recollection is that the reasons operating in my mind at the time were that the future employment of the vessel would be in the north and also that there was a controversy between the parties over the sale of the vessel.

Q You understood that there was a controversy about the sale of the vessel, was that it?

A I am citing that as a probable reason that operated on my mind at the time. It is some three or four years ago, I know, but I know at the time—

Q Do you remember any other instance during the years you have represented the Board of Marine Underwriters, when you went to Captain Gibbs as their representative, and undertook to forbid him to act for the company that you represented?

A I have frequently given Captain Gibbs instructions,

whether instructions along these lines or not I do not remember—whether along these lines or not I do not recollect any case.

Q Did you know this vessel was lying up in the river where she was lost?

A No, I do not think I did until the time of the loss.

Q You considered then when you went to Captain Gibbs that there was no liability on your policy because the vessel had been sold, in the first place?

A That was all—

Q Well, if that was true, you knew anything Captain Gibbs might do would not bind you, didn't you?

A Well, I knew that.

Q The vessel had been sold and the policy had been rendered void by the sale?

A Without solving all these questions I thought best thing to do was to have it definitely understood.

Q Mr. Mason, you knew if that vessel had been sold without the consent of your company that the policy was an absolute nullity, didn't you?

A I certainly did.

Q Then why did you go to Captain Gibbs on that occasion and say to him "Don't you do anything"?

A I considered that the circumstances sufficiently justified me in giving Captain Gibbs instructions.

Q And the second reason you assign is when you found she was sunk in the Duwamish river, you felt that she was outside of the scope of the policy when she was lost or damaged?

A Yes sir.

Q Did you give that to Captain Gibbs as a reason?

A I do not know that I gave Captain Gibbs either of my reasons.

Q Did you inform the Board of Marine Underwriters of these reasons that you had given Captain Gibbs?

A I think I informed the Canton Insurance Office. I did not communicate with the board.

Q Well, did you see any of the reports that Captain Gibbs made at the time as surveyor, to the Board of Marine Underwriters in San Francisco?

A No.

Q Did you know that he was purporting to act there as the representative of the Marine Underwriters all the way through?

A No, he was not purporting to act as the representative of the Board all the way through.

Q Do you know that his reports showed that he was acting as a member of the Board of Marine Underwriters all the way through?

A You mean with reference to this particular thing?

Q Yes, with reference to the Vashon?

A I do not think so. I do not think Captain Gibbs ever made any such reports to the Board—

Q Did you make any report to Parrott & Company, the general agents in the United States, of what you had said to Captain Gibbs?

A I presume I did.

Q Have you any recollection whether you did?

A I have no doubt I did, because I undoubtedly made a full report of the loss of the Vashon.

Q Parrott & Company were in consultation with other members of the Board of Marine Underwriters about the payment of this very loss, and part of these insurance companies were members of the Board and did pay the loss, you know that, don't you?

A I know that all of the companies having insurance under a different form of policy settled their loss.

Q You know that the whole matter of adjustment of this loss was taken up in San Francisco, Parrott & Company representing your company were present, and they all paid the loss except the companies that are involved in this suit?

A I do not know that, and I do not think that is quite the statement of fact, Mr. Kerr. There was different forms of contract on that vessel that was subscribed by the different companies, under different conditions, and I understand those companies paid.

Q Did you see the other policies?

A I did, I think I did see the other policies.

Q Was any of your authority from Parrott & Company with reference to these matters of loss in writing?

A Only in the way of general correspondence.

Q All the authority you ever got or could have gotten from either the Canton or Parrott & Company, general agents, would be in writing?

A In the nature of general correspondence.

Q I say in the nature of correspondence?

A Yes, and by verbal instructions from their manager who was frequently here.

Q Well, if you undertook to tell the surveyor of the Board of Marine Underwriters of San Francisco the morning after this accident, that he must not assume to represent your company as a member of that board, you would certainly report the matter of as great moment as that to Parrott & Company?

A I presume that I reported it.

Q Will you examine that correspondence with Parrott & Company and the Canton, both, at that time, and ascertain whether you made any report in that connection to either of them, and if so will you bring your correspondence in here at the next sitting, so that I can see it?

A I will write to the office of Parrott & Company to return the letters. My own copies, of course, and correspondence have all been destroyed. I closed my office about three years ago, and since then have destroyed all the office records and files. But the original letter to Parrott & Company is probably in the files in San Francisco.

Q Did you ever have a conversation with Captain Gibbs after that morning about this vessel?

A Oh, the matter was the subject of conversation with Captain Gibbs several times.

Q Did you have any, to your knowledge, about this vessel?

A Yes sir.

Q Did he tell you what was being done?

A Yes sir.

Q He told you what was being done?

A Yes sir.

Q Did you inquire of him or did he make a statement as the representative of the Board?

A I went to Captain Gibbs frequently in the course of my business and on other occasions.

Q Why did you go to him, what was being done with reference to the loss of the Vashon, after you claim to have given him instructions the morning after the accident to take no action in behalf of your company?

A I did not go to him for that purpose, Mr. Kerr, the matter was brought up at different times when I was in conversation with Captain Gibbs possibly on other subjects and the salvage of the Vashon was talked about the same as any other matter, and I may have spoken to him with reference to it, because this matter was the subject of considerable correspondence and negotiations with the office of Johnson & Higgins for a period of six or eight months after the loss. I think that I did have occasion several times to call on Captain Gibbs regarding it.

Q If, as a matter of fact, this vessel had not been sold and if, as a matter of law, she was inside the scope of the policy when she was lost, there was no reason why your company should not pay the loss, that you know of?

A If the policy conditions were intact and the risk was in effect.

Q If the risk was in effect and she had not been sold, and admitting that she was within the terms of the policy, within the scope of the policy when she sank, these are the only two objections that you ever made to it?

A These are the only two that I think I had in mind at the time.

REDIRECT EXAMINATION.

Q (Mr. Gorham). I show you respondent's identifications "1" and "2." "1" is a letter from Johnson & Higgins' attorney, to Frank Waterhouse & Company, in re Vashon, and dated August 10th, 1907. And "2" is from Johnson & Higgins to Frank Waterhouse Company dated August 16th, 1907. What had Frank Waterhouse Company to do with the matter at that time?

A They were the brokers who placed the risk originally.

Q Johnson & Higgins.

A Frank Waterhouse & Company originally placed this risk. They offered it to me for insurance and to the other office.

Q Who did finally place the risk, Johnson & Higgins or Waterhouse, with your company?

A Waterhouse.

Q In what capacity does Johnson & Higgins act in this matter?

MR. KERR: I object, the letters speak for themselves.

A Johnson & Higgins I believe secured the account subsequent to the placing of the insurance and became the representatives of the Independent Transportation Company.

Q And why were these letters addressed to Frank Waterhouse Company?

A Because the insurance had been placed through Frank Waterhouse Company as brokers.

Q Were Frank Waterhouse Company the agents at this time, August 1907, of the Canton?

A No.

Q Is that the request you testified to in your cross examination, for transfer of the assured under the policy to the Independent Transportation Company or the Katalla company?

A Yes. Frank Waterhouse Company forwarded that request to me and asked me to give the endorsement as requested. I returned it, declining to do so.

Q And subsequently Johnson & Higgins withdrew the request, as per identification "2"?

A Yes, I understood they did.

(Testimony of witness closed).

E. H. HUTCHINSON, a witness called on behalf of the respondents, being duly sworn, testified as follows:

Q (Mr. Gorham). What is your business?

A Marine Insurance.

Q How long have you followed that business?

A Twenty one years.

Q In what capacities?

A I was in a broker's office in London, and was then connected with Lloyd's for ten years. I then went to China with the Yang Tsze Insurance Association and am still in their employ.

Q What capacity do you represent the Yang Tsze Association in Seattle?

A Manager of their office here, agent.

Q How long have you occupied that position, approximately?

A About two and three fourth years.

Q What are your powers and duties as agent and manager of the Seattle office?

A Accepting insurance and settling claims.

Q General agency?

A General agency, yes.

Q (Mr. Kerr). You have a power of attorney?

A Power of attorney from the company.

MR. KERR: I object on the ground that the power of attorney is the best evidence.

Q (Mr. Gorham). I show you libellant's exhibit "H" being the Yang Tsze Insurance Association policy on the Vashon involved in this suit, and call your attention to the endorsement on the policy in typewriting "Warranted em-

ployed in the general freighting and passenger business on Puget Sound within a radius of 30 miles from Seattle. Warranted not to carry lime under deck. W. W. T."

MR. GORHAM: Will you admit, Mr. Kerr, that the initials "W. W. T." are the initials of W. W. Tomlinson who countersigned the policy?

MR. KERR: If you say it is.

MR. GORHAM: It is.

Q Are you familiar with the construction placed upon such an endorsement in these particular words, among the insured and underwriters on Puget Sound?

A Yes sir.

Q What is the accepted meaning of that term, that specific term among the insured and underwriters on Puget Sound and during the year 1907?

MR. KERR: I object as incompetent.

A That he would warrant that the vessel will be employed during the continuance of the policy in general freighting and passenger business on Puget Sound within a radius of 30 miles of Seattle and will not carry lime under deck.

Q Does the endorsement operate as a condition precedent or as a condition to run during the term of the policy?

MR. KERR: I object as immaterial.

A From the inception of the policy to its termination.

Q I will ask you if you were the agent of this company at the time this policy was written, July 16, 1907?

A No, I was in the head office in Shanghai.

(No cross examination).

(Testimony of witness closed).

F. A. FREDERICKS, a witness called on behalf of the respondents, being duly sworn, testified as follows:

Q (Mr. Gorham). Your residence?

A Seattle.

Q Your business?

A Marine Insurance.

Q How long have you followed that business, Mr. Fredericks?

A Oh nine or ten years.

Q What capacities?

A As agent.

Q With what powers and duties?

A As local agent under San Francisco and as agent direct from the head office with full power.

Q Writing policies and settling risks?

A Yes sir.

Q What companies do you represent, among others I will ask you if you represent the China Traders Insurance Company?

A Yes sir.

Q Of Hongkong?

A Yes sir.

Q I show you libellant's exhibit "F", the China Traders' policy, and call your attention to the endorsement in the following language, in typewriting, "Warranted employed in the general freighting and passenger business on Puget Sound within a radius of 30 miles of Seattle. Warranted not to carry lime under deck." With initials in handwriting "W. W. T."

MR. GORHAM: I will ask you Mr. Kerr if you will admit these are Mr. Tomlinson's initials? They are?

MR. KERR: Yes sir.

Q I will ask you if you know what the accepted construction at Seattle, in the year 1907, among the insured and underwriters had been of such endorsement of that language as regards the effect of the endorsment as to time?

MR. KERR: I object as incompetent.

A The effect of the endorsement would be that during

the life of the policy the vessel would be confined within the limits specified.

Q And the trade?

A And the trade specifically.

Q Then I understand you, that the endorsement is not a condition precedent but a condition to operate at the time of the attaching of the policy and during the life of the policy?

MR. KERR: I object as incompetent.

A Yes sir.

Q What has been, approximately, the volume of your business at Seattle?

A In dollars and cents?

Q Yes, in dollars, approximately, to show what your experience has been.

A Premium income?

Q Yes sir. . .

A Well, it varies. Some years forty or fifty thousand dollars.

Q What would be the amount of risk carried under such volume of business?

A Several million dollars.

Q It has been under your direct supervision and agency?

A Yes.

Q Were you the agent of the China Traders' at the time this policy was written on the Vashon?

A No sir.

Q You know Mr. Tomlinson?

A Yes sir.

Q Is that Mr. Tomlinson's signature?

A Yes sir.

Q These are his initials under this endorsement I have read on exhibit "F"?

A Yes sir.

(No cross examination).

(Testimony of witness closed).

Hearing adjourned until August 17, 1911 at 1:30 p. m.

Seattle, Washington, October 1, 1912.

PRESENT: Mr. Kerr, for the libellant.
Mr. Gorham, for the respondent.

J. R. MASON, recalled on behalf of the respondents, testified as follows:

Q (Mr. Gorham). I hand you a paper which has been marked for identification No. 25, and ask you when you first saw that?

A Well, this is a copy of a letter sent from my office to Parrott & Company, of San Francisco, general agents of the Canton Insurance Office, in response to a request in a letter from them asking that I make a report on the steamer Vashon and forward it to them.

Q You have read that letter?

A Yes sir, I have read this through and I recognize it as a copy of my letter, to the best of my knowledge and belief.

MR. GORHAM: That is the letter you called for, Mr. Kerr. Have you any objection to it because it is not the original?

MR. KERR: No.

MR. GORHAM: I offer the letter in evidence.

Paper marked respondents exhibit 25, filed and returned herewith.

Q I ask you, Mr. Mason, if the Canton Insurance Office was a member of the San Francisco Board of Marine Underwriters at the time of the accident to the Vashon, the time she was wrecked in the Duwamish river?

A They were said to be members of the Board. I used the Board's services, and the Board's surveyors. It was my understanding they were members of the Board.

Q That they were members of the Board of San Francisco Underwriters?

A The Canton Insurance Office, you mean?

Q Yes sir.

A Yes sir, they were members of the Board.

(Testimony of witness closed).

MR. GORHAM: We want to offer these two letters that were marked identifications 1 and 2, in evidence. They were identified and referred to during the examination of several of the witnesses, but not formally offered.

Letters marked respondents exhibits 1 and 2 respectively, filed and returned herewith.

MR. GORHAM: We offer in evidence a certified copy of the field notes of sections 17, 18, 19, 29 and 30, township 24 north, range 4 east, Willamette Meridian, certified by the United States Surveyor General for Washington, under date of August 19, 1911, for the purpose of showing the meanders of the Duwamish river at and about the place where the wreck occurred.

Paper marked respondents exhibit 26, filed and returned herewith.

MR. GORHAM: And for the same purpose we offer a certified copy of the plat of the same township, under certificate of the United States Surveyor General for Washington, of date August 19, 1911.

Paper received without objection, marked respondents exhibit 27, filed and returned herewith.

MR. GORHAM: I also offer in evidence and ask to have filed a stipulation entered into on the 20th of April, 1912.

Paper marked respondents exhibit 28, filed and returned herewith.

MR. GORHAM: I also offer this further stipulation as to certain evidence, dated October 1, 1912.

Paper marked respondents exhibit 29, filed and returned herewith.

F. A. FREDERICKS, recalled on behalf of the respondents, testified as follows:

Q (Mr. Gorham). Was the China Traders Insurance Company a member of the Board of San Francisco Marine Underwriters, at the time of the disaster to the Vashon involved in this case?

A No sir.

(Testimony of witness closed).

MR. GORHAM: Respondents rest.

Testimony closed.

United States of America, Western District of Washington,
Northern Division. ss.

I, A. C. Bowman, a Commissioner of the United States District Court for the Western District of Washington, residing at Seattle, in said District, do hereby certify, that the foregoing transcript from page 1 to page 192, both inclusive, contains all of the oral testimony offered before me by the parties.

The several witnesses, before examination, were each duly sworn to testify the truth, the whole truth and nothing but the truth.

The testimony was reduced to writing by myself, or under my direction, at the times stated in said transcript.

Proctors for the parties stipulated waiving the signatures of the witness to the testimony given by them before me.

The exhibits offered by the parties, as shown in the transcript and index, have been marked, filed, and are returned herewith.

The exhibits 9 and 22, offered by the respondent, have been copied in the record, and the originals returned, by agreement of the parties.

I further certify that I am not of counsel nor in any way interested in the result of this suit.

Witness my hand and official seal this 1st day of October, 1912.

(SEAL) A. C. BOWMAN,
U. S. Commissioner.

COMMISSIONER'S TAXABLE COSTS:

Libellant:

Hearings, Nov. 10, 14; Dec. 6, 1910; Mch. 15, 1911, 4 days at \$3	\$ 12.00
Administrating oaths to 6 witnesses60
Filing 40 exhibits at 10 cents	4.00
Transcript above hearings, 354 folios at 10 cents	35.40
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	\$ 52.00

Respondents:

Hearings August 17, 18, 1911; Oct. 1, 1912	\$ 9.00
Administering oaths to 5 witnesses50
Filing 29 exhibits at 10 cents	2.90
Transcript above hearings, 240 folios at 10 cents.....	24.00
	<hr/>
	\$ 36.40

(Endorsed): Filed in the U. S. Dist. Court, Western Dist. of Washington, Northern Division, Nov. 8, 1912. Frank L. Crosby, Clerk, by L. Deputy.

In the United States District Court for the Western District of Washington, Northern Division.

No. 3849.

INDEPENDENT TRANSPORTATION COMPANY, Libellant,

vs.

CANTON INSURANCE OFFICE, LIMITED, ET AL, Respondents.

Be it remembered that on Tuesday, May 17th, 1910, pursuant to stipulation of counsel hereinafter set forth, at the office of Messrs. Page, McCutcheon & Knight, in the Merchants Exchange Building, in the City and County of San Francisco, State of California, personally appeared before me, Clement Bennett, a notary public in and for the City and County of San Francisco, State of California, Louis Rosenthal, Harry Pinkham, Harry Stephenson Smith, Mitchell Thompson, John Barneson, Edgar Alexander and James John Theobald, witnesses produced on behalf of the respondents, and James John Theobald, produced on behalf of the libellant.

Ira Campbell, Esq., appeared as proctor for the libellant, and William H. Gorham Esq., appeared as proctor for the respondents, and the said witnesses, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(It is stipulated that the testimony of Louis Rosenthal, Harry Pinkham, Harry Stephenson Smith, Mitchell Thompson, John Barneson, Edgar Alexander and James John Theobald may be taken under Section 863 of the Revised Statutes of the United States, without the usual notice, and that the signature of the witnesses may be waived, and that it may be transcribed into typewriting and filed by the notary, and used with the same force and effect as though the witnesses themselves had testified orally in court.

It is further stipulated and agreed between the proctors for the libellant and respondent that the testimony to be taken hereunder may be used in the case of the Independent Transportation Company vs. Canton Insurance Office, Limited, the case of the Independent Transportation Company

vs. The China Traders Insurance Company, Limited, and the case of the Independent Transportation Company vs. Yang Tsze Insurance Association, Limited, all consolidated under No. 3849, in the United States District Court for the Western District of Washington, Northern Division).

DEPOSITION OF LOUIS ROSENTHAL.

State of California, City and County of San Francisco, ss.

LOUIS ROSENTHAL, a witness produced on behalf of the respondent in the above entitled cause, having been duly sworn, testified as follows:

Q MR. GORHAM: What is your full name?

A Louis Rosenthal.

Q Your age?

A 45.

Q Your residence?

A San Francisco.

Q How long have you resided in San Francisco?

A 36 years.

Q Your occupation?

A Marine insurance.

Q How long have you followed the business of marine insurance?

A 27 years.

Q In what various departments?

A In no other department except marine insurance.

Q In what department in marine insurance?

A From clerk to general agent.

Q Are you representative of any foreign marine insurance company?

A The Switzerland General of Zurich, Switzerland, and the Thames & Mersey Marine Insurance Company of Liverpool.

Q Have you any relation with the Marine Board of Underwriters of San Francisco?

A I am president of the San Francisco Board of Marine Underwriters.

Q Is the office of president of the Board an honorary office or is it an active office?

A It is an honorary office, honorary in so far that it is without emolument; still, it is active, of course, to a certain extent.

Q To what extent?

A To the extent of attending as president to the affairs of the Board.

Q Administrative head of the Board?

A Administrative head of the Board.

Q Is that the only Marine Board in San Francisco?

A That is the only Marine Board in San Francisco.

Q Are you familiar with the San Francisco form of policy for marine insurance?

A Yes sir.

MR. GORHAM: I will ask to have this paper marked for identification, Exhibit 1.

(The notary marks the paper "respondent's exhibit 1")

Q I call your attention, Mr. Rosenthal, to this indorsement, "Vessel warranted employed in the general passenger and freighting business on Puget Sound within a radius of thirty miles from Seattle." I will ask you what in your opinion is the construction of that clause relative to the time during which it is operative, that is to say, whether as a warranty in the nature of a condition precedent which must prevail and exist at the time of the attaching of the policy, or whether it is a warranty continuing during the life of the policy; in other words, what is the understanding of the Marine Underwriters in the use of such language as is contained in that warranty?

MR. CAMPBELL: Objected to as calling for the opinion and conclusion of the witness, and tending to vary the terms of a written contract.

A My opinion is that this vessel from the inception of the policy and during the entire life of the policy must be employed in the general passenger and freighting business on Puget Sound within a radius of thirty miles from Seattle.

CROSS EXAMINATION.

Q MR. CAMPBELL: By that you mean that when employed the vessel must be employed in that way?

A I should say so, Mr. Campbell. Of course, it is quite usual for vessels to be unemployed for an hour or a day, as you may say, but every vessel is unemployed at certain times.

Q It is customary with the underwriters on this coast under the San Francisco form of hull time policy such as this policy is to permit vessels to lay up and still remain covered under the policy?

MR. GORHAM: I object to that question on the ground that it is not proper cross examination and is immaterial, because there is no permission provided for in the contract or pleaded in the libel.

A Under the San Francisco policy it is customary to notify the insurance company when vessels go out of commission, and an endorsement is usually put on the policy stating that the vessel is laid up and out of commission, and when she resumes her employment again the insurance companies are again notified and a clause to that effect is put on the policy.

Q MR. CAMPBELL: That does not answer my question. During the period she is laid up, under the policy she is still held covered by the policy, is she not?

A Undoubtedly, if the company has had notice that she is laid up, and has accepted such notice.

Q It is the universal custom among the underwriters to hold the vessel covered during the period of laying up; no return of premium is paid unless specially agreed on?

A I do not say it is the usual custom. A thing of this kind is conceivable, that a man should say "I am going to lay my vessel up at a certain place," and they will say "We do not want your vessel laid up at that place, and will not cover it while it is laid up in that place."

Q Are vessels usually or not usually held covered when laid up?

A They are usually held covered, especially when they are laid up in customary and usual places.

Q You would read this warranty as touching the character of her employment, as I understand. That warranty designates the character of trade and business in which she is to be employed?

A The character of her employment and the locality.

DEPOSITION OF HARRY PINKHAM.

State of Californit, City and County of San Francisco, ss.

HARRY PINKHAM, a witness called on behalf of the respondent in the above entitled cause, having been duly sworn, testified as follows:

Q MR. GORHAM. State your full name?

A Harry Pinkham.

Q Your age?

A 38.

Q Your residence?

A Burlingame.

Q California?

A Yes sir.

Q How long have you lived in California?

A About 37 years.

Q What is your occupation?

A I am the manager of the marine department for J. B. F. Davis & Son.

Q What is that firm What business are they in?

A They are in the general brokerage business, insurance, and they are the managers of the Standard Marine Insurance Company of Liverpool, England.

Q How long have you been following the marine insurance business?

A I have been connected with Davis for 23 years, and a greater portion of that time I have been in the marine department.

Q What are your duties in charge of the marine department of the firm by which you are employed?

A I am the local underwriter for the Standard Marine Insurance Company. I place all the marine business as broker for Davis.

Q Without asking an impertinent question, or seeking a disclosure of your business, I will just ask generally the volume of the business that you handle a year?

A As brokers?

Q Yes.

A Well, I could not give you only an approximate idea; say \$150,000 a year in premiums. I guess it runs more than that, \$200,000 in premiums.

Q I just want to have the court get a general idea of the volume of the business that you transact. Are you familiar with the San Francisco form of hull time marine policy?

A Yes sir.

Q I show you respondent's exhibit for identification No. 1, and call your attention to a warranty clause in the following words: "Vessel warranted employed in the general passenger and freighting business on Puget Sound within a radius of thirty miles from Seattle," and ask you if you know what construction the insurance trade in San Francisco place upon the clause relative to the time when it is operative, whether it is a warranty understood as a condition precedent and affecting the vessel only at the time the policy attaches, or whether it is a warranty operative during the life of the policy?

MR. CAMPBELL: That can be answered by yes or no.

Q MR. GORHAM: That calls for an answer yes or no.

A How did you ask it. Make that statement again.

Q Read the question, Mr. Notary.

(The Notary reads the question.)

A You mean to say I have got to answer that question yes or no?

Q Do you know what construction the trade put on it, that is, whether you do or do not?

A I am of the opinion that I do know, yes.

Q What is the understanding of the insurance trade with respect to the clause to which your attention has been called, relative to the time when it is operative?

MR. CAMPBELL: I object to the question asked as calling for the opinion and conclusion of the witness, and tending to vary the terms of a written contract.

A Well, I will say that the understanding is that the vessel shall be confined to the trade as stated by the clause.

Q MR. GORHAM: Confined during what time?

MR. CAMPBELL: The same objection.

A The full life of the policy.

Q MR. GORHAM: What is your understanding of that clause relative to the time during which that clause is effective?

MR. CAMPBELL: The same objection.

A My understanding is that the vessel is warranted to be employed on Puget Sound during the life of this policy exclusively.

CROSS EXAMINATION.

Q Mr. Campbell: Have you ever written that same clause on another policy?

A Yes sir; I believe I have, many times.

Q That same clause?

A Of course, I could not say absolutely the same clause, but I possibly may have written the same clause many times, or a similar clause.

Q I am not asking about a similar clause, but whether you have made that particular clause on any other policy?

A I could not say yes, without looking up my records.

Q Under the San Francisco form of hull time policy

such as that is, does the insurance trade, so to speak, of San Francisco recognize the right of the insured vessel to lay up during the life of the policy, and be held covered under the policy?

A The San Francisco policy will cover a vessel at all times, whether laid up or in commission.

Q I understand that your construction of that warranty is one which affects the trade in which the vessel is to be employed. Is that it?

A Yes sir.

Q It is a warranty that touches the employment of the vessel?

A That is the idea; to restrict the trade of the vessel in certain waters.

RE-DIRECT EXAMINATION.

Q MR. GORHAM: Look at that exhibit and see if you can testify whether or not that is the San Francisco form of a hull time policy (handing)?

A Yes sir, it is.

Q And the clause to which your attention has been directed is what is called an endorsement?

A An endorsement in addition to the policy.

Q A marginal endorsement?

A Yes sir.

DEPOSITION OF HARRY STEPHENSON SMITH.

State of California, City and County of San Francisco, ss.

HARRY STEPHENSON SMITH, a witness called for the respondent in the above entitled cause, having been duly sworn, testified as follows:

Q MR. GORHAM: State your full name?

A Harry Stephenson Smith.

Q Your age?

A 60 years of age.

Q Your residence?

A I sleep in Oakland.

Q Your place of business?

A San Francisco.

Q What is your business?

A General marine agent.

Q How long have you followed that business?

A 28 years.

Q Where have you followed that business?

A In San Francisco.

Q State whether or not you have followed that business in all its departments?

A In all its departments.

Q Is your firm the representative of any marine insurance company at present?

A Yes sir.

Q Will you name it?

A The Maritime Insurance of Liverpool and the Western Assurance of Toronto.

Q Are you familiar with the San Francisco form of hull time marine policy?

A Yes sir.

Q I will show you respondent's exhibit for identification No. 1, and call your attention to the marginal endorsement and warranty clause reading "Vessel warranted employed in the general passenger and freighting business on Puget Sound within a radius of thirty miles from Seattle," and ask you if you know what the understanding in the insurance business or trade is at San Francisco with respect to that clause, particularly with respect to the time the warranty is effective?

A I do.

Q Will you state what it is?

MR. CAMPBELL: We object to the question as calling for the conclusion and opinion of the witness, and tending to vary the terms of a written contract.

A This indicates that the vessel is to be employed in a general passenger and freighting business on Puget Sound during the entire period of the policy contract.

Q MR. GORHAM: Then I understand you that it is not in the nature of a condition precedent effective only at the instant that the policy attaches, but it is effective during the entire life of the policy?

MR. CAMPBELL: The same objection.

A Yes sir, it is effective during the entire life of the policy.

Q MR. GORHAM: That is the general interpretation and construction of San Francisco among the marine insurance underwriters?

MR. CAMPBELL: The same objection.

A Yes sir.

CROSS EXAMINATION.

Q MR. CAMPBELL: Mr. Smith, did you ever attach or see attached to any other policy of insurance other than the policy subject to this litigation on which that warranty was written?

A Yes sir.

Q That particular warranty?

A Yes sir.

Q What policies?

A I suppose I have seen a hundred. I could not tell you the individual policy.

Q Have any of those policies ever been construed by the courts?

A I don't know.

Q Have you those policies in your possession?

A I think it is doubtful. The policy always goes to the assured, you know.

Q Where are those policies?

A I suppose in the hands of numerous assured; I could not say.

Q Do your books show what policies are written with that particular warranty endorsed on that?

A I think possibly we may have copies of policies with that endorsement on.

MR. CAMPBELL: I ask that the witness produce them.

Q Did you have any losses under those policies that you recall at the present time?

A I have not any doubt in the world but what we have.

Q Do you recall having any losses on those policies?

A Not at the moment, I do not.

Q Do you recall having been called upon to construe that policy by reason of loss of the character of loss in this case?

A I don't know exactly what the character of the loss in this case is. I don't think we have been called upon to construe that clause in any way. I don't think we have. I don't remember.

Q Will you look up your records and see if you can produce what I have asked for?

A Certainly I will. You must remember that all records prior to three years ago have been destroyed.

Q Can you name me now any policy issued to any assured with that particular warranty on? Not a similar warranty, but that particular warranty on the policy?

A I could not for the moment, no, but I know it is quite usual.

Q Do you mean the exact wording in that warranty and every wording of the warranty of the usual?

A Yes sir. I have seen it in a great many cases, I feel sure.

Q Do you recall any particular case now?

A I cannot just for the moment.

Q Where were these vessels insured that had this warranty that you speak of?

A In San Francisco.

Q Where were the vessels being employed?

A Puget Sound, British Columbia, and San Francisco Bay.

Q In answering these questions, are you bearing in mind the exact wording of this warranty?

A I think so. I think I recognize the wording on it. It did not seem to me unusual in any way.

Q I am saying the exact wording.

A I think that is about as they are constantly written.

Q You are not positively sure that the warranties that you are referring to are exact in terms with this policy?

A I think they are.

Q I say, you are not exactly sure about it?

A I would not be exactly positive that they are verbatim, but I think they are.

Q The warranty as you construe it is a warranty which touches the character of employment?

A Yes sir.

Q It is a warranty which goes to the employment of the vessels?

A Yes sir.

Q Under the San Francisco form of a hull time policy such as this is in this case, are the vessels covered while they are laid up, within the terms of the policy?

A No sir.

Q They are not?

A No sir.

Q Are they not customarily regarded by the trade as covered while they are laid up?

A I don't think they are, without notice. It is customary to give notice to the insurance company, if they desire to have them laid up under that policy.

Q It is customary to hold them while they are laid up, if notice is given?

A It is customary on notification.

Q That is, if the underwriter has knowledge of the fact that the steamer is laid up?

A If they get due notification, it is quite customary to grant it.

Q The only difference between the San Francisco form of the hull time policy and the English form is that the San Francisco form does not provide for the return of premium?

A It does not provide for return of premium.

Q That is the difference between the two policies covered so far as laid up?

A That is one of the differences, that is my reply.

Q What other differences are there?

A The text of the policy differs very materially.

Q So far as the laying up period is concerned?

A As I recollect the English policy has a specific agreement to lay up and return premium which the San Francisco policy does not.

Q Under the San Francisco form of policy, it is customary for the underwriters to recognize the right of the owner to lay up his steamer and be held covered, but no premiums to be returned unless the underwriter sees fit to make the return?

A An underwriter would always prefer to have the vessel laid up than going.

Q Is not that the custom of the insurance trade? That is what I am getting at.

A It is quite customary for the assured to obtain from the underwriter a concession in premium when their vessels are laid up and out of commission.

Q During which period the vessel is always covered?

A During which period the vessel is always covered.

Q It is customary for the San Francisco underwriters to recognize that the vessel is held covered during that period?

A If it is so endorsed on the policy.

Q Don't they do it where the endorsement is not made on the policy?

A No sir.

Q They do not?

A No sir.

Q Don't they do it on due notification?

A If the notification is sent them with the policy an endorsement is made thereon reducing the premium and covering the risk while laid up.

Q Supposing there is no reduction of premium.

A I would not consider it necessary for him to notify the company in that case.

Q They would be held covered while they are laid up any way?

A I think they would be held covered while laid up, whether they notified the company or not, if they did not require a return premium.

RE-DIRECT EXAMINATION.

Q MR. GORHAM: In reference to other policies and warranty clauses similar to this, I will ask you, where a warranty in the nature of a marginal endorsement is placed on a policy providing the vessel is warranted employed in a certain trade within certain defined waters, the verb "employed" being used in the form the past participle "employed" without any form of the auxiliary very "to be" so that your endorsement would read "vessel warranted employed in" then following the trade and prescribed waters, the underwriters at San Francisco, I understand you to construe the word "employed" as there used to refer to a time future relative to the date of the policy, so that it will cover and be effective during the term of the policy; is that correct?

MR. CAMPBELL: I object to the question as being leading and calling for the opinion and conclusion of the witness and tends to vary the terms of the written contract.

A That is my opinion.

Q MR. CAMPBELL: By the construction that you

are giving to this warranty, Mr. Smith, you do not mean to say that a vessel covered by this policy, with that warranty upon the policy, must be constantly, continuously, and for every moment during the life of the policy, employed in that business on those waters?

A Are you putting emphasis on the word "employed."

Q My emphasis is on the word "continuously and constantly employed" during every moment of the life of the policy?

A I should answer that by saying that if she is employed, she must be employed in those waters.

DEPOSITION OF MITCHELL THOMPSON.

State of California, City and County of San Francisco, ss.

MITCHELL THOMPSON, a witness produced on behalf of the respondent in the above entitled cause, having been duly sworn testified as follows:

Q MR. GORHAM: What is your name?

A Mitchell Thompson.

Q Your age?

A 36.

Q Your residence?

A Alameda.

Q Your place of business?

A 112 Market Street.

Q Where?

A San Francisco.

Q What is your business?

A Insurance broker.

Q What class of insurance or character of insurance?

A General insurance.

Q Marine, as well as others?

A Yes sir; you might say principally marine.

Q How long have you been in that business?

A I have been in the marine insurance brokerage business for about nine years.

Q To what extent in volume of business?

A Do you mean the volume of business placed here?

Q Yes, generally speaking?

A I think about \$150,000.

Q Are you familiar with the San Francisco form of hull time policy, marine insurance?

A Yes sir.

Q I show you respondent's exhibit 1 for identification and call your attention to the marginal endorsement in the following words: "Vessel warranted employed in the general passenger and freighting business on Puget Sound within a radius of thirty miles from Seattle," and ask you if you know what the insurance trade or marine underwriters at San Francisco understand as to the meaning of that clause?

A Yes sir, I think I do.

Q What is their understanding of the meaning of that clause?

MR. CAMPBELL: I object to the question as calling for the opinion and conclusion of the witness and tending to vary the terms of a written contract.

A I believe that the construction of that would be that the warranty would be running with the time of the policy while the vessel was employed.

MR. GORHAM: Q As I understand you, the warranty is effective during the term of the policy, and not exclusively at the time of the attachment of the policy?

MR. CAMPBELL: The same objection.

A During the term of the policy.

MR. GORHAM: Q The use of the word "employed" in that warranty without any form of the auxiliary verb "to be" then does not confine it to the past tense "employed" at the time of the attachment of the policy?

MR. CAMPBELL: Objected to as leading and calling for the conclusion of the witness, and tending to vary the terms of a written contract.

A I should say not.

CROSS EXAMINATION.

MR. CAMPBELL: Q Mr. Thompson, are you agent for any companies?

A No sir.

Q Were you interested in placing any of the insurance upon the steamer "Vashon" that was lost?

A No sir.

Q Do you recall at the present time any policy which contained this particular warranty in those exact words?

A No sir, I do not.

Q Do you recall their particular warranty in those exact words having been discussed among underwriters in any other case than the case which is in suit?

A I should answer no, except similar warranties as referring to San Francisco Bay. My business is in San Francisco, and I have no business in Puget Sound.

Q I am speaking about this particular one.

A No sir.

Q The construction you place on this warranty is one touching the character of the employment of the vessel?

A Yes sir.

Q Your construction is, as I understand it, that while she is employed she is to be employed in that particular trade and in those particular waters?

A Yes sir.

Q Under the San Francisco form of hull time policy, such as this is, does the trade hold the vessel covered while she is laid up, if there is no return of premium?

A In my opinion, they do, yes; if the hazard is not increased, I should like to add, by so doing.

Q That is a matter of opinion, whether the hazard is increased or not?

A That is something, but if the hazard is not increased, I should say that the vessel was held covered while laid up, —providing the hazard was not increased.

Q If she was laid up in a place that is usual and customary to lay up vessels of that character, in your judgment would the custom of the insurance trade in San Francisco regard the vessel as covered while laid up?

A If she was laid up in a safe place, I should say yes.

RE-DIRECT EXAMINATION.

MR. GORHAM: Q The premiums are fixed in view of the risk to which the vessel is exposed, are they not?

A Yes sir.

Q If your vessel is to operate on Puget Sound and she is laid up in San Francisco Bay, she would not be within the terms of the policy, would she?

MR. CAMPBELL: Objected to as being immaterial and having no bearing on the issues in the case.

A I should say not.

MR. GORHAM: Though it would be equally a safe place?

A I should say that the vessel would have to be laid up within the conditions of the policy.

Q Within the prescribed waters?

A Yes sir.

RE-CROSS EXAMINATION.

MR. CAMPBELL: Q That is merely a matter of opinion on your part?

A That is all.

Q You are not testifying to what is the custom of the insurance trade in that respect?

A I am simply expressing my opinion as a broker.

MR. CAMPBELL: I move to strike out the opinion of the witness as incompetent, irrelevant and immaterial.

MR. GORHAM: What do you base your opinion on?

A From my general knowledge of the business and general experience of the brokerage business.

MR. CAMPBELL: Q If this warranty instead of having the words "Puget Sound" had the words "San Francisco Bay" and the vessel was laid up in Oakland Creek, where it is customary to lay up vessels of this class, if it is so customary, you would regard the trade as recognizing that the vessel was covered during the laying up period?

MR. GORHAM: Objected to as immaterial and not proper cross examination.

A Yes sir, I would consider the vessel covered.

MR. CAMPBELL: Q You do not mean to say that the vessel has actually got to be laid up in the waters which are technically known as San Francisco Bay? They may be waters which are tributary to the Bay, if they are waters in which it is customary to lay up vessels of that class?

A If it is waters that are safe to lay vessels up in, I would consider her as being within the warranty.

Q Safety is largely judged by what it is customary to do with vessels of that class, is it not?

A It is a matter of opinion, of course.

Q Is that not the way you usually judge safe places, by what is customary?

A What might be safe for one vessel might not be safe for another.

Q If vessels of this particular class are customarily laid up in that particular place, is not that the means by which you usually judge the safety of the place?

A If it can be considered as being within the policy warranty, I should say that she would be covered.

Q That is not exactly what I am asking you. You say if she were laid up in a safe place?

A A safe place within the policy warranty.

Q Do you mean that that safe place would have to be

confined to what are technically known as the waters of San Francisco Bay, for instance?

A If the policy provided for San Francisco Bay absolutely, it would have to, yes; what we would ordinarily call San Francisco Bay. If you have reference to Oakland Creek, we construe that as San Francisco Bay also.

Q Suppose it is up in the Straits of Canquinez?

A I would consider that as a part of San Francisco Bay.

Q Are you familiar with Seattle?

A No sir.

Q On the government charts and the Coast Survey, Carquinez Straits are not within the technical description of San Francisco Bay, are they?

A It is customary whenever policies are warranted to San Francisco Bay, to also include tributaries by so stating.

Q You would consider that the same thing was true as to the tributaries of Puget Sound, would you not?

A The warranties usually provide for San Francisco Bay and tributaries.

Q If the warranty simply said "San Francisco Bay," would you then include the tributaries?

A I would say that the policy was faultily written.

Q If the vessel was laid up in a tributary under that form, would you consider she was held to be covered?

A If it could be construed as a safe tributary, I would consider that she was covered.

Q You would say the same thing regarding Puget Sound, would you not?

A I suppose so. I do not know anything about Puget Sound, so I could not say.

Q If the tributary was safe, you would consider it the same?

A I would construe it the same.

DEPOSITION OF HARRY STEPHENSON SMITH, (Recalled).

MR. CAMPBELL: Q Are any of your companies interested in the loss of the "Vashon"?

A No sir.

Q You did not reinsure either the Canton or the China Traders, or the Yang-Tsze.

A I did not.

DEPOSITION OF JOHN BARNESON.

State of California, City and County of San Francisco.—ss.

JOHN BARNESON, a witness produced on behalf of the respondent in the above entitled cause, having been duly sworn, testified as follows:

MR. GORHAM: Q State your full name?

A John Barneson.

Q Your age?

A 48.

Q Your residence?

A San Mateo.

Q Your place of business?

A San Francisco.

Q Your occupation?

A Shipping and commission, general merchant.

Q How long have you followed the shipping business?

A 20 years as a merchant.

Q Ashore?

A Yes sir.

Q Previous to that at sea?

A Previous to that at sea for 16 years.

Q A master mariner.

A Yes sir.

Q Have you been owner of vessels?

A Yes sir.

Q Insurer of vessels?

A Yes sir.

Q Ocean going ships?

A Yes sir.

Q Are you familiar with the San Francisco form of hull time policy of marine insurance?

A Fairly so. I have not examined one recently.

Q I will show you respondent's exhibit No. 1 for identification, and call your attention to the marginal endorsement, the following words: "Vessel warranted employed in the general passenger and freighting business on Puget Sound within a radius of thirty miles from Seattle," and ask you if you know what the understanding of owners of insured property at San Francisco would be on a clause in that language relative to the time when the warranty takes effect?

MR. CAMPBELL: The question is, whether you know.

MR. GORHAM: Q If you do, say yes; if you do not, say no.

A Do I know what the general custom is?

Q What the general understanding is.

A I would know what my understanding was.

Q Do you know what the general understanding is among owners of floating property having occasion to insure and use such warranty?

A I don't know whether I should answer as to what others might figure. I know how I would figure on it.

Q State your knowledge, Captain?

MR. CAMPBELL: We object to the question on the ground that the witness has not been qualified, and further, it is asking for the opinion and conclusion of the witness, and tends to vary the terms of a written contract.

A I would judge that the warranty clause is a governing clause in the policy and would have to be followed. I believe it is a technical proposition, but I would still figure that it is perfectly plain.

MR. GORHAM: Q Is the warranty effective exclusively at the time that the policy attaches, or is the warranty effective during the term of the policy, in your opinion?

MR. CAMPBELL: The same objection.

A During the term of the policy.

CROSS EXAMINATION.

MR. CAMPBELL: Q By your opinion, Captain, do I understand you to mean that it is a warranty which touches the character of her employment?

A During the life of the policy, yes.

Q Under that warranty, would you expect your vessel to be held covered while she is laid up?

A I would be very doubtful about it, if I had not given written notification of any change.

Q We are not speaking of notification now. Would you as an owner regard your vessel as covered during that period, the policy running for one year?

A I think that there is a technical question there that is somewhat involved, but I would not consider that I was covered if I changed the condition of the risk as stated in the policy without notification and permission.

Q Would you consider that that warranty requires you to keep your vessel constantly and continuously in that particular trade and those particular waters, say from the 26th of June, 1908, to the 26th of June, 1909, without allowing it to lay up at all?

A Technically, yes. I mean by that, that if the vessel laid at a wharf at Seattle or anywhere within the radius of that policy, she would be covered.

MR. GORHAM: Q If in the waters of the policy?

A If in the waters of the policy, but I would be afraid technically, I would consider it from the technical point, but I would be somewhat doubtful if the vessel would be covered if she was taken outside the limits of that warranty.

MR. CAMPBELL: Q That is merely a matter of a personal opinion with you?

A Yes sir.

Q That is not based on any knowledge of the custom in the insurance trade at all regarding that particular?

A It is based on my experience of the custom.

Q Of the technical underwriters?

A Yes sir.

Q Would it be your opinion that that warranty required her to be constantly employed during the year?

A I am of the opinion that that warranty would mean what it states.

Q There is no doubt about that.

A That the vessel must be within that radius during that time unless otherwise provided by permission from the underwriters.

Q What would you say if she were laid up in waters that were tributary and which was the usual and customary and safe place for vessels of her character to be laid up in?

A My experience has taught me that still, that if it is outside of that warranty, that technical lapse or default has been committed in not giving written notice, if the vessel was taken outside of the limits of the policy.

Q If notice was given?

A If notice was given on the endorsement that is a totally different proposition. I am looking on this contract—I will tell you, very unwillingly, I do not want to give an underwriter an opportunity to get out on a technicality, as far as any evidence of mine is concerned. I am looking on this just as it is written, just as my experience has taught me to act. If I had that policy and were going to take that boat outside of that limit, I would give them that notice. If I had not, I would think I had got myself into trouble. That is the honest truth about it.

Q Did you ever have any experience with a warranty in those exact words?

A No sir, I think not.

Q You have never heard a warranty of that character discussed among the underwriters?

A No sir.

Q This is simply an opinion that is personal to yourself?

A Yes sir.

Q And based on your experience with policies containing very technical warranties?

A Yes sir. My experience is, that the text of policies have to be followed very carefully.

Q This warranty reads "Vessel warranted employed in the general passenger and freighting business on Puget Sound within a radius of thirty miles from Seattle." Is your construction of it that the words "employed in the general passenger and freighting business on Puget Sound" touches the character of her employment on Puget Sound?

A Yes sir; I think it governs the character of the employment.

Q Are you familiar with the Sound territory?

A Yes sir.

Q Are you familiar with what is known as the arm that runs into Bremerton, Port Orchard?

A Yes sir, I know that territory.

Q Would you say that this warranty permitted that vessel to trade in those waters?

A It would permit her to trade anywhere within a radius of thirty miles.

Q From Seattle? ..

A Yes sir.

Q On waters that were not necessarily the technical portion known and designated by the government as Puget Sound, but in those waters which empty into Puget Sound?

A I would say anywhere within a radius of thirty miles from Seattle. I think by the term "Puget Sound" in that warranty is meant the waters of Puget Sound; that is, actually the waters of Puget Sound and tributary waters.

I do not think I would confine it to the actual Sound proper. I would not put that construction on it.

Q Your consideration would be that it would even be the waters of Elliott Bay that may not be know as Puget Sound?

A Yes sir, Elliott Bay is where Seattle is located.

Q And that is what you consider an indentation or arm or tributary of what are technically as Puget Sound?

A Yes sir.

Q Do you know where the tide flats of Seattle are?

A Yes sir.

Q Do you know that there are certain parts of those tide flats to the south of the city which are navigable?

A Yes sir.

Q If it was customary to take vessels into those parts of the tide flats which are navigable, you would consider that your vessel was within the waters described here, would you not?

A Yes sir; I would consider she was within those waters, if they were navigable waters.

Q You would consider that she was covered while in those waters under this warranty?

A I would consider she was covered under that warranty if she was operating. I would not consider she was covered if she was laid up under that warranty.

Q Do you base that opinion on any knowledge of custom among the underwriters with a warranty of this particular character?

A No sir. I could not say that I know the custom. I used to think so, but I came to the conclusion I did not.

Q If the underwriters were notified that she was to be laid up you would consider that the laying her up in the waters I have last described would not be a breach of the warranty?

A Not unless they objected immediately.

Q You are familiar with the San Francisco form of hull time policy, are you not?

A Yes sir.

Q It is customary in the insurance trade to hold vessels covered while laid up under a yearly policy, is it not?

A Yes sir.

Q That has been your experience?

A Yes sir.

Q Your construction of this warranty simply touches the character of the employment?

A Yes sir, I think it is a special warranty.

RE-DIRECT EXAMINATION.

M. GORHAM: Q If this vessel could be navigated from Elliott Bay into Lake Washington, which is on the eastern boundary of Seattle, would you consider that Puget Sound?

A No sir.

Q A body of fresh water?

A I would not consider a navigation from Elliott Bay to Lake Washington as being navigation on Puget Sound.

Q You understand by Puget Sound the salt waters of that arm of the sea where the tide ebbs and flows?

A Yes sir, any ordinary tributary or indentation or bay in the salt waters of the bay. I think if you go up rivers or anything of that kind, that is not Puget Sound.

Q You would not consider Duwamish River, Puget Sound?

A No sir.

RE-CROSS EXAMINATION.

MR. CAMPBELL: Q That is, you mean when you are up what they call the Duwamish River?

A If you go off the Sound into any of the rivers you

are off the waters of Puget Sound, as a sailor would consider it.

Q If you are at that point where the waters of a river flow into a tributary of Puget Sound, say Elliott Bay, you would not consider that you were beyond the waters?

A I would consider that you are beyond the waters of Puget Sound just as soon as you went beyond the rise and the fall of the tide, outside of the salt water.

Q As long as you were within the rise and fall of the tide, and where the salt water reached the vessel, if that was right at the so-called indentation of Puget Sound, you would still consider it Puget Sound?

A You are getting down to a pretty fine question on that point of location. If you get off of the navigable waters of Puget Sound, I would not call it strictly Puget Sound. If you get into any of the rivers, how far you would have to go up any of those rivers before you get off the Sound is a question; you would not have to go very far. The moment you get into the mouth of the river you are off the Sound; there is no question of that.

Q The mouth of the river you describe as a place where this fresh body of water last passes between two well defined headlands?

A Yes sir. You are not in the river when you are on the tide flats.

Q You do not consider the mouth of Duwamish River right down at the tide flats?

A No sir. I could not define the exact location of Duwamish River, but I would not consider you were in the river when you were on the flats.

Q That is the land that is uncovered and covered by the flow of the tide at different seasons of the year?

A Yes sir, at ordinary rise and fall of the tide.

DEPOSITION OF EDGAR ALEXANDER.

State of California, City and County of San Francisco, ss.

EDGAR ALEXANDER, a witness produced on behalf of the respondent in the above entitled cause, having been duly sworn, testified as follows:

MR. GORHAM: Q State your full name?

A Edgar Alexander.

Q Your age?

A 60.

Q Your residence?

A San Francisco.

Q And your occupation?

A Adjuster of marine losses.

Q How long have you resided in San Francisco?

A Over 20 years.

Q How long have you been in the marine insurance business?

A About 40 years.

Q To what extent, Mr. Alexander, relative to covering the entire field, or have you been simply in one department of it?

A I have been engaged in marine insurance for that time in every department.

Q Have you represented marine underwriters?

A Yes sir. Marine insurance, I am speaking of.

Q Marine insurance companies?

A Yes sir.

Q What company?

A The Canton, New Zealand, and also engaged in the Thames & Mersey Insurance Company of Liverpool.

Q In San Francisco?

A In San Francisco.

Q Are you familiar with the San Francisco form of hull time policy of marine insurance?

A Yes sir.

Q I show you respondent's exhibit No. 1 and call your attention to the marginal endorsement in the following words: "Vessel warranted employed in the general pas-

senger and freighting business on Puget Sound within a radius of thirty miles from Seattle." Are you familiar with the general understanding of the marine underwriters at San Francisco relative to the construction of that clause?

A Yes sir.

Q Insofar as the time when it becomes effective or during which it is effective?

A Yes sir.

Q What is that understanding?

MR. CAMPBELL: I object to the question as calling for the opinion and conclusion of the witness, and tending to vary the terms of a written contract.

A No underwriter in San Francisco, or anywhere else, would understand it except in one way, and that was that it applied to the whole time insured by the policy.

Q The use of the word "employed" as a past participle without the use of any form of the auxiliary verb "to be" would not confine the warranty as read to you in that particular policy to the time when the policy attached?

MR. CAMPBELL: I renew the objection, and also that it is leading.

A No sir. It is merely a grammatical error to which many people are subject in expressing themselves.

MR. GORHAM: Q In other words, an idiom of the English language?

A Yes sir.

Q The word "employed" as there used has a future meaning as well as a present meaning?

MR. CAMPBELL: The same objection.

A It must have.

MR. GORHAM: Q Eliminating the particular employment or the particular water that is mentioned in the clause as I read it to you, I will ask you if that is a common form of endorsement of a warranty where the vessel is warranted employed in a certain trade and certain waters?

A Very common.

Q At San Francisco?

A Excluding this question of radius?

Q I mean excluding the locality?

A Warranted employed you mean?

Q The words "warranted employed" in so and so is a common form of warranty?

A Yes sir.

A At San Francisco?

A Yes sir.

Q Among the marine underwriters?

A Yes sir.

Q And so accepted by the assured.

A Yes sir.

Q How long has such a form prevailed? How long has it been customary for the underwriters to write policies and the assured to accept them in such form?

A Ever since I can remember.

Q Your memory is very good?

A I think so; pretty good on facts.

CROSS EXAMINATION.

MR. CAMPBELL: Q Your construction of that warranty, Mr. Alexander, is a warranty which touches the character of her employment?

A Not merely the character of the employment.

Q The character of the employment and the waters on which she may be employed?

A The principal object of this—

Q (Intg.) I am saying, your construction, as I understand it, is a warranty touching the character of her employment and the waters on which she may be employed?

A Yes sir.

Q Have you ever in your experience as an underwriter

endorsed that particular warranty in those exact words on a policy?

A Not the exact words, word for word, I don't suppose I did. Which words do you refer to?

Q I am referring to all the words.

MR. GORHAM: Q As a whole?

A I can speak as to some of them.

MR. CAMPBELL: Q As a whole, word for word, as that warranty reads, you have not, in your experience, endorsed that frequently upon a policy that you can recall?

A I should say leaving out this radius, we have.

Q I am asking you of that warranty in those exact terms?

A I don't remember the exact wording, word for word, of this clause.

Q Has it been your experience as an adjuster that the San Francisco Underwriters hold a vessel covering any San Francisco form of hull time policy while the vessel is laid up?

A Yes sir.

Q The policy does not provide for a return premium?

A No sir.

Q Whether return premium is made is a matter of subsequent adjustment between the underwriters and the assured?

A Yes sir.

Q Would it be your opinion that that warranty includes not only the waters which may be technically known as the waters of Puget Sound but the bays and arms and tributaries of Puget Sound in which there is a rise and fall of the tide in salt water which are navigable?

A I do not know anything about rise and fall of the tide. I consider that the warranty states that it would be employed in the waters of Puget Sound, and what are the waters of Puget Sound are to be determined as matters of geography.

Q What would be your opinion on it; would you not consider it would include the arms and bays?

A I am not competent to give any opinion upon the geographical limits of Puget Sound waters.

Q Would you consider it to include an indentation or bay of Puget Sound?

A An indentation or bay?

Q Yes, which was tributary to Puget Sound?

A An indentation or bay of Puget Sound, would in a general way I say include it.

Q For instance, you would not exclude Elliott Bay from the waters of Puget Sound?

A I don't know Elliott Bay.

Q You know the harbor of Seattle?

A A little.

Q You have been there?

A Yes sir.

Q Many times?

A Just three or four times.

Q For instance, if the policy read "San Francisco Bay" instead of "Puget Sound" would you consider it permitted the vessel to enter Oakland Creek and discharge a cargo there?

A Oakland Creek?

Q Yes, if it read "San Francisco Bay" instead of "Puget Sound"?

A No sir, I don't think I would.

Q Would you at Carquinez Straits?

A I only know what underwriters do in such cases. They would put "San Francisco Bay and or tributaries" if they meant to include those. It is a common form of expressing the privileges or the limitation, rather, as expressed in policies of insurance.

Q If they did not include the word "tributary" would you not consider that the vessel has a right to go into the mouth of Carquinez Straits and discharge the cargo?

A I do not care about giving an opinion on the particular spot. I am speaking of the general understanding of underwriters. Tributaries are very dangerous places in some cases. An underwriter that would permit a vessel to navigate the ocean, although the tributary is running into the ocean, would not accept the risk into the tributaries running into that ocean.

Q Your restriction and limitation upon tributaries would depend upon the safety of the tributaries?

A I am speaking about the custom of underwriters; for their protection the limit is prescribed, and if it prescribes ocean it does not include the tributary.

Q If this vessel were engaged in carrying general freight to various points around San Francisco Bay, and she should go into the mouth of Carquinez Straits and discharge say a load of hay, or take on a load of hay, you would not consider that she had broken that warranty, would you?

A Which warranty?

Q If the warranty reads "to be employed on the waters of San Francisco Bay"?

A If she went to Carquinez Straits?

Q To the mouth of Carquinez Straits?

A I would consider that she had broken the warranty, yes.

Q You do not think that San Francisco Bay would include the tributaries such as Carquinez Straits?

A The policy does not say "and tributaries"; it says "San Francisco Bay" only.

Q Have you ever heard a warranty of this character, of these particular words, discussed among underwriters other than with reference to this particular case?

A As to the wording of it?

Q Yes.

A I have heard of this case.

Q I say other than this case?

A No sir. No question has ever been raised.

Q There has been considerable discussion among the underwriters in San Francisco about this case?

A Yes sir.

Q And a general resentment against the fact that a claim was made for the loss under the policy?

A Those subjects I do not wish to give any answer to, resentment or otherwise, against the company or against the claimant.

Q I do not mean spite-work, but a feeling against the loss?

A You mean a matter of opinion?

Q Yes.

A Whether the loss is claimed or not?

Q The feeling among the underwriters that the loss should not be paid?

A I do not call that resentment. The claimants in this case think they have a claim. The underwriters think they have not. There is no resentment about it; it is a matter of opinion.

Q I do not mean resentment, hard feeling. We all recognize that every person has his legal right, and his right to enforce it, if he can, according to his idea.

A Yes sir.

Q It is a matter of business only with any of us.

A The underwriters have a right to exercise their opinions, naturally; that always comes up.

RE-DIRECT EXAMINATION.

MR. GORHAM: Q I wish you would look at that form of respondent's exhibit 1 for identification, and ask you if that is the usual hull time San Francisco form (handing)?

A Yes sir, they are copyrighted; they are all identical. I need not go through it.

MR. GORHAM: I offer this respondent's exhibit 1 for identification in evidence.

(The Notary marks the paper "Respondent's Exhibit 1").

MR. CAMPBELL: I shall reserve the right to further object to it, for the reason that I have not before me the original policy and have had no opportunity to make a comparison.

DEPOSITION OF JAMES JOHN THEOBALD.

State of California, City and County of San Francisco, ss.

JAMES JOHN THEOBALD, a witness produced on behalf of the libellant in the above entitled cause, having been duly sworn, testified as follows:

MR. CAMPBELL: Q You are the general agent for the Canton Insurance Office, Limited, Mr. Theobald?

A No sir; I am the manager for Parrott & Company, who are the general agents.

Q Which company is one of the respondents in this case?

A Yes sir, the Canton Insurance Office.

Q Was Frank Waterhouse & Company, Incorporated, of Seattle, the agent up there of the Canton Insurance Office, Limited?

MR. GORHAM: Our objection to the question is reserved. Will you state the time in your question.

MR. CAMPBELL: Yes.

Q At the time that this risk was placed with the Canton and the policy issued?

A My belief is that Mr. J. R. Mason was the agent at the time that the policy was issued.

Q Was he at that time in the employ of Waterhouse & Company?

A At that time he was the agent of the Canton, and subsequently sold or transferred his business to Frank Waterhouse & Company, Incorporated; that is, if the date is correct.

Q You do not know whether at that time his office was a part of the office of Frank Waterhouse & Company?

A Not to my knowledge.

Q You do not know just when he consolidated his interests?

A I could not tell you without looking up my records.

MR. GORHAM: I will now call you, Mr. Theobald, as a witness for the respondent.

DIRECT EXAMINATION.

MR. GORHAM: Q How long have you been in the insurance business, Mr. Theobald?

A About 23 years.

Q Marine insurance?

A Marine insurance.

Q In all its departments?

A In all departments of marine insurance, yes.

Q Are you an officer of the Board of Marine Underwriters of San Francisco, or a member of any of its committees?

A Yes sir; I am on the adjustment committee.

Q What are the duties of the adjustment committee?

A They examine all adjustments that are presented to them by the adjusters after they have been drawn up and examined, and then the adjustment is turned over to the underwriters for settlement with the insurance.

Q Are you familiar with the San Francisco form of hull time policy of insurance?

A Yes sir.

Q Are you familiar with the policy issued by the Canton Insurance Office in this particular case—generally, I mean?

A Yes sir.

Q Are you familiar with the marginal warranty endorsed on the original policy?

A Yes sir, I have seen this.

Q I call your attention to the marginal warranty

endorsed on respondent's exhibit No. 1 in the following terms: Vessel warranted employed in the general passenger and freighting business on Puget Sound within a radius of thirty miles from Seattle." Do you know what the general understanding of the marine underwriters of San Francisco is of such a warranty with respect to the time at which or during which it is effective? Just yes or no?

A Yes sir.

Q What is that understanding.

MR. CAMPBELL: We object to the question because it is calling for the opinion and conclusion of the witness, and tends to vary the terms of a written contract.

A That the vessel would have to be employed during the entire life of the policy.

MR. GORHAM: Q Eliminating the radius of 30 miles and eliminating the particular waters "Puget Sound" designated in that particular warranty which I have read to you, is that a common form of warranty in hull time policies in San Francisco, a vessel warranted employed in certain trades and waters?

MR. CAMPBELL: Objected to as immaterial and as having no bearing on the issues in the case.

A I have known policies issued with the warranty "warranted engaged" instead of "warranted employed."

MR. GORHAM: Q I am asking you if the language "vessel warranted employed" is of common usage?

A "Employed" or "engaged".

Q I will ask you what the understanding is among marine underwriters as to the use of the word "employed" or "engaged" without the additional use of some form of the auxiliary verb to be, relative to whether the use of the word "employed" or "engaged" refers to future or only to present?

MR. CAMPBELL: Objected to as calling for the opinion of the witness, and asked for the purpose of tending to vary the terms of a written contract.

A It means warranted to be or will be employed during the life of the policy.

CROSS EXAMINATION.

MR. CAMPBELL: Q Under the San Francisco form of hull time policy in which the words "warranted employed" or "warranted engaged" are used, it is customary to recognize the right of the owner to be laid up and to be held covered during the laying up?

A Under the San Francisco hull form there is no provision made for laying up.

Q I say, it is customary to recognize the right to lay up and to be held covered during the laying up period?

A Only after application has been made to the insurance company to have the vessel laid up, and that application approved by the insurance company; and it is also the custom to state where the vessel shall be laid up or will be laid up.

Q You are the active manager of Parrott & Company, the agents for the Canton Insurance Company?

A Yes sir, the marine insurance manager.

Q As a member of the adjustment committee of the San Francisco Board, the adjustment of this loss was passed upon by you?

A I was not a member of the adjustment committee when it came up.

Q Do you know whether or not the adjustment was passed by the committee?

A I am not aware.

Q Are you not aware from your examination of the adjustment of the losses?

A I could not say without looking up our records; I really don't know.

Q Do you know of your own knowledge whether or not part of the insurers on this vessel at the time of this loss had paid their proportion of the loss?

A I understand that some of the interested insurance companies have paid but they had a different warranty.

Q A different warranty, or was it under the English form of policy?

A I don't know whether they had an English form. I know that some of the companies had a different form of warranty. The New Zealand Company had a form of warranty, and it said, "On Puget Sound or tributaries" or "and tributaries," I could not say which.

Q Are you sure of that?

A Yes sir.

Q Have you seen the warranty itself?

A I was in the office of the Firemen's Fund representative; I did not actually see the policy, but it was read in my presence.

MR. CAMPBELL: I move to strike that out as being hearsay.

RE-'DIRECT EXAMINATION.

MR. GORHAM: Q I show you an application from Johnson & Higgins, Seattle, Washington, addressed to the Canton Insurance Office, dated January 25th, 1908, covering some 10 or 15 vessels owned by Puget Sound corporations, or vessels plying in Puget Sound, and ask you generally what that paper is (Handing)?

A This is a covering note, covering a fleet of vessels belonging to several steamship lines of Seattle, and accepted by us for the amounts as stated.

Q Under the schedule?

A Yes sir. I might say that our signature does not appear on this form. It is not customary for the underwriter to sign his own form. The duplicate which they hold in their office is signed by the Canton Insurance Company.

Q The risks and the contract generally is in the terms of the covering note?

A Yes sir.

Q With special endorsements?

A Yes sir.

Q I call your attention to a particular warranty in typewriting at the bottom of the schedule under the word "Memo": "Warranted confined to the waters of Puget Sound, not north of Comax, nor west of Flattery," and

ask you if you know what the construction of the marine underwriters of San Francisco is upon the use of the word "confined" relative to the time when the warranty is effective or during which it is effective?

MR. CAMPBELL: Objected to as incompetent, irrelevant and immaterial, for the reason that it is not a warranty in the terms of the warranty on the policy in this case.

A It means to be confined during the term of the policy.

MR. GORHAM: Q Were policies written pursuant to this covering note, or is this the contract of insurance after being accepted by your office?

A In some instances, they have, and in some instances they have not, because the date of attachment has not yet applied.

MR. GORHAM: We offer this in evidence as Respondent's Exhibit 2.

(The Notary marks the paper "Respondent's Exhibit 2").

MR. CAMPBELL: We object to it as incompetent, irrelevant and immaterial, for the terms and conditions and warranties of it are not the same as the terms and conditions and warranties of the policies which are the subject of the action in the case at bar.

MR. GORHAM: Q I show you another paper and ask you what this is (Handing)?

A This is an application for a policy on the steamer "Titania," and we insured in San Francisco, Canton Policy No. 74,936, under the terms of this application.

Q With the special warranties and clauses and endorsements as shown by the application?

A Yes sir.

Q This is Johnson & Higgins' application?

A Yes sir.

Q I call your particular attention to the attached type-written warranty in the following language: "Warranted confined to the Pacific Coast trade, not north of Comax nor

south of Valparaiso, but with liberty to proceed to ports and or places in the Hawaiian Islands." I will ask you whether the same general construction as you heretofore testified respecting the special warranty in the case at bar, and the special warranty in Respondent's Exhibit No. 2 will apply to the application on the "Titania" on the words "warranted confined"?

MR. CAMPBELL. I object to the question as being incompetent, irrelevant and immaterial, on the ground that the terms and conditions and warranties on the two applications are not the same as the terms and conditions and warranties of the policies in the suit at bar. And upon the further grounds that it is asking for the opinion and conclusion of the witness, and tending to vary the terms of a written contract, and on the further ground that the question is leading.

MR. GORHAM: Q Do you understand the question, Mr. Theobald?

A Yes sir. It would mean that the "Titania" would have to be confined to the waters as specified.

Q During what time?

A During the entire term of the policy.

MR. GORHAM: We offer this in evidence, as Respondent's Exhibit No. 3.

(The Notary marks the paper "Respondent's Exhibit No. 3").

MR. CAMPBELL: We object to it as incompetent, irrelevant and immaterial, for the reasons that the terms and conditions and warranties of the application are not the same as the terms and conditions and warranties in the policies in suit in the case at bar.

CROSS EXAMINATION.

MR. CAMPBELL: Q Under this warranty in the application marked Respondent's Exhibit 2, which reads "Warranted confined to the waters of Puget Sound, not north of Comax nor west of Flattery," whether it is your opinion or not that these vessels covered by this application, and the policies issued pursuant thereto, would be permitted to go into the tributary waters of Puget Sound?

A They are not.

Q If one of these vessels should go up Hoods' Canal, would you consider that a breach of this warranty?

A I should not consider any water—

Q (Intg.) That is not my question.

A I am answering it to the best of my ability; whether I would or not consider Hood's Canal—

Q Yes.

A I should consider Hood's Canal part of Puget Sound.

Q There are certain tributaries to Puget Sound that you consider part of Puget Sound, do you not?

A There are.

Q That is simply a matter of opinion which is as to what tributary is a part of Puget Sound and what tributary is not?

A It is not my opinion but the opinion of all underwriters.

Q It is your opinion in this case?

A Yes sir.

Q Under this warranty you would recognize the right of that vessel to go into the waters of the Straits of Juan de Fuca, would you not?

A Yes sir.

Q As a tributary of Puget Sound?

A Yes sir.

Q You would recognize her right to go into Elliott Bay, would you not?

A That is a part of Puget Sound.

Q As a tributary of Puget Sound?

A I think it is a part of Puget Sound.

Q Is it a part of what is technically known as Puget Sound, or a tributary to Puget Sound, or an indentation to Puget Sound?

A It is what is known as Puget Sound in the minds of all marine underwriters.

Q And is the southern part of Elliott Bay a part of the waters that are known to the underwriters as the waters of Puget Sound?

A I do not know what the southern part of Elliott Bay is.

Q You do not know?

A No sir.

Q Then the interpretation which is put upon the term "waters of Puget Sound" by the underwriters is not confined purely to that portion of the waters which are inside of Cape Flattery?

A In my opinion, it is not.

Q It includes certain of the arms and certain of the indentations which waters lead to that part which is technically known as Puget Sound?

A Yes sir.

United States of America, State and Northern District of
California, City and County of San Francisco, ss.

I certify that, in pursuance of the stipulation hereunto annexed, on Tuesday, May 17th, 1910, at the hour of 9 a. m., before me, CLEMENT BENNETT, a Notary Public in and for the City and County of San Francisco, State of California, at San Francisco, at the office of Messrs. Page, McCutchen & Knight, in the Merchants Exchange Building, in the City and County of San Francisco, State of California, personally appeared Louis Rosenthal, Harry Pinkham, Harry Stephenson Smith, Mitchell Thompson, John Barneson, Edgar Alexander and James John Theobald, witnesses called on behalf of respondents and James John Theobald produced on behalf of the libellant, in the cause entitled in the caption hereof. IRA CAMPBELL, Esq., appeared as proctor for the libellant, and WILLIAM H. GORHAM, Esq., appeared as proctor for the respondents, and the said witnesses, being by me first duly cautioned and sworn to testify the whole truth in said cause, and being carefully examined, deposed and said as appears by their depositions hereto annexed.

I further certify that said depositions were then and there taken down in shorthand notes by myself and were afterwards reduced to typewriting; and I further certify that, by stipulation of the proctors for the respective parties, the reading over of the depositions to the witnesses and the signing thereof was duly waived.

Accompanying the depositions and annexed thereto and forming a part thereof are Respondent's Exhibits 1, 2 and 3, introduced in connection therewith and referred to and specified therein. Such exhibits are endorsed by me with my official title.

And I do further certify that I have retained the said depositions in my possession for the purpose of mailing the same with my own hand to the Clerk of the United States District Court for the Western District of Washington, Northern Division, at Seattle, Washington, for whom the same were taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said depositions and caption named nor in any way interested in the event of the cause named in the said caption.

In Testimony Whereof, I have hereunto set my hand and seal at my office this 24th day of May, 1910.

CLEMENT A. BENNETT,

Notary Public in and for the City and County of San Francisco, State of California.

In the United States District Court for the Western District
of Washington, Northern Division.

No. 3849.

INDEPENDENT TRANSPORTATION COMPANY, Libellant,

vs.

CANTON INSURANCE OFFICE, LIMITED, ET AL, Respondents.

Be it Remembered that on Thursday, February 2nd, 1911, pursuant to stipulation of counsel hereinafter set forth, at the office of Messrs. Page, McCutchen & Knight, in the Merchants Exchange Building, in the City and County of San Francisco, State of California, personally appeared before me, JAMES P. BROWN, a United States Commissioner for the Northern District of California, to take acknowledgements of bail and affidavits, etc., W. H. La-BOYTEAUX and J. B. LEVISON, witnesses produced on behalf of the Libellant.

IRA CAMPBELL, ESQ., appeared as proctor for the libellant, and WILLIAM H. GORHAM, ESQ., appeared as proctor for the respondent, and the said witnesses, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, did thereupon depose and say as is herein after set forth.

(It is stipulated that the testimony of W. H. La-Boyteaux and J. B. Levison may be taken under Section 863 of the Revised Statutes of the United States, without the usual notice, and that the signature of the witnesses may be waived, and that it may be transcribed into type-writing and filed by the Commissioner, and used with the same force and effect as though the witnesses themselves had testified orally in court.

It is further stipulated and agreed between the proctors for the libellant and respondent that the testimony to be taken hereunder may be used in the case of the Independent Transportation Company vs. Canton Insurance Office, Limited, the case of the Independent Transportation Company vs. The China Traders Insurance Company, Limited, and the case of the Independent Transportation Company vs. Yang Tsze Insurance Association, Limited, all

consolidated under No. 3849, in the United States District Court for the Western District of Washington, Northern Division).

DEPOSITION OF W. H. LaBOYTEAUX.

State of California, City and County of San Francisco, ss.

W. H. LaBOYTEAUX, a witness produced on behalf of the libellant in the above entitled cause, having been duly sworn, testified as follows:

MR. CAMPBELL: Q What is your business, Mr. LaBoyteaux?

A Average adjuster and insurance broker.

Q Are you a member of any firm of insurance brokers?

A I am a member of the firm of Johnson & Higgins.

Q What is their business?

A Average adjusters and insurance; brokerage.

Q Is the firm of Johnson & Higgins engaged in the insurance brokerage business on this coast?

A It is.

Q Can you give me approximately the volume of business which is placed by your firm on this coast in the course of a year?

A What do you mean?

Q The volume of premiums?

A I do not know that I can. I should say in the neighborhood of two millions of dollars.

Q How long have you been engaged in this business on this coast?

A On the coast?

Q Yes?

A Since May, 1899.

Q Have you placed any insurance on hulls under the San Francisco form of hull time policy?

A I have.

Q I hand you three policies of insurance, which are

libellant's exhibits F, G and H, in this case, and ask you to examine the same, and with the exception of the marginal endorsements, I ask you whether these policies are the form known as the "San Francisco hull time policy"? (Handing).

A I notice that they are all marked "Hull Time San Francisco Form," and I assume that they are all in the general provisions about the same. You cannot tell exactly without comparing every word in the policy?

Q Is the San Francisco form a standardized form?

A More or less. There may be some slight variations from it according to the ideas of the different companies.

Q Are those slight variations indicated by endorsements on the standard form usual?

A Sometimes they are and sometimes there may be a variation in the body of the policy. These have every indication of being the usual form of San Francisco hull time.

Q I may say they have been so identified by witnesses called for the respondent. Do you know the custom prevailing among underwriters on this coast with respect to holding vessels, covered under the San Francisco form of hull time policy, while they are laid up. Answer yes or no?

A What is that question?

Q Read the question Mr. Reporter?

(The reporter reads the question).

A Yes sir.

Q Now, Mr. LaBoyteaux, under the San Francisco form of a hull time policy, I ask you whether or not it is the custom among underwriters on this coast to hold a vessel covered, while laid up, without notice of such laying up being given by the assured to the underwriter on the vessel and the latter's consent to such laying up obtained where there is no return of premium for the laying up period made to the assured?

A Yes sir. The return of premium is simply a matter of rebate to the assured by reason of the laying up.

Q Where no rebate is made is it under the custom necessary for the assured to give notice that he is going to

lay his vessel up in order that his vessel shall be held covered, during the period she is actually laid up?

A It is not necessary for him to give notice.

Q Is she held covered while she is laid up?

A Yes sir. The idea of notice is to secure a return of premium during the laying up.

Q Is that the only purpose?

A That is the only purpose.

Q That is the custom.

A Yes sir.

CROSS EXAMINATION.

MR. GORHAM: Q I understand your testimony, Mr. LaBoyteaux, is confined to the policies that have been submitted to you, assuming they are the usual form of San Francisco hull time policy, exclusive of the marginal endorsements on the policy. That was the question that counsel put to you. In the form of his questions he excluded the marginal endorsements?

A Yes sir.

Q I understand your answer excluded those marginal endorsements?

A They do not refer to the marginal endorsements.

Q Your answer is, taking into consideration the terms and conditions of the policy exclusive of the marginal endorsements?

A That is right.

DEPOSITION OF J. B. LEVISON.

State of California, City and County of San Francisco, ss.

J. B. LEVISON, a witness produced on behalf of the libellant in the above entitled cause, having been duly sworn, testified as follows:

MR. CAMPBELL: Q What is your business, Mr. Levison?

A Second vice-president of the Fireman's Fund Insurance Company.

Q What department of the business of the Fireman's Fund Insurance Company have you supervision of?

A The marine department.

Q Does that include the underwriting on hulls?

A It does.

Q The acceptance of insurance and issuance of policies on hulls?

A Yes sir.

Q How long have you been so engaged?

A In maritime underwriting?

Q Yes?

A About 32 years.

Q Have you any connection with the San Francisco Board of Underwriters?

A I have.

Q Is your company a member of that board?

A It is.

Q Were you ever connected with that board in an official capacity?

A Yes sir.

Q What office, if any, did you hold?

A I have held the office of president, a member of its adjusting committee, and a member of its surveyors committee, at different times.

Q How long were you president of the board?

A One year.

Q Do you know whether or not the Canton Insurance Company, and the Yang Tsze Insurance Company are members of the San Francisco Board?

A They are.

Q What is approximately the volume of business done by the Marine Department of the Fireman's Fund Insurance Company on this coast in a year in premiums?

A The volume in premiums?

Q Yes?

A Of course, we have a number of different standards of net premiums written by the company or gross premiums written by the office.

Q The gross marine insurance premiums?

A I should say roughly three quarters of a million a year; that as I say is approximate. I have not the figures in my mind.

Q How does the volume of marine insurance business done by your company compare with that of other companies doing business on the coast, so far as you know?

A Our office does the largest business of any company on the coast, if that is what you mean?

Q Yes. I hand you three policies of insurance, libellant's exhibits F, G and H, in this case, and with the exception of the marginal endorsements, I ask you, whether or not these policies are the form known as the "San Francisco form of a hull time policy?"

A I have not, of course, the time to read them over, but they have that appearance, and I notice they are so entitled on the head and I presume the wording corresponds with what we call the San Francisco time.

Q Is that a standardized form of policy?

A Particularly yes.

Q Did you ever see that endorsement of San Francisco, whatever the endorsement is—

A San Francisco form.

Q —upon a policy which was not a San Francisco form?

A I never have.

Do you know, Mr. Levison, the custom prevailing among underwriters on this coast with respect to holding vessels, covered under the San Francisco form of hull time policy, while they are laid up?

A Yes sir.

Q Under the San Francisco form of a hull time policy, I ask you whether or not it is the custom among under-

writers on this coast to hold a vessel covered, while laid up, without notice of such laying up being given by the assured to the underwriter on the vessel and the latter's consent to such laying up obtained where there is no return of premium for the laying up period made to the assured?

A Read that over again, I have lost the first of it.

Q Read the question Mr. Reporter?

(The Reporter reads the question).

Do you understand the question now, Mr. Levison?

A No sir, I do not understand whether it calls for simply no or yes. It is rather a lengthy question.

Q I ask you whether or not it is the custom under the San Francisco form of a hull time policy, among underwriters on this coast to hold a vessel covered, while laid up, where there is no notice of such laying up given by the assured, and the latter's consent to such laying up obtained where there is no return of premium for the laying up period?

A It is, but I should like to explain in that connection almost invariably such notice is given for the purpose of obtaining return premium.

Q We have nothing to do with that feature of it in this case.

A I understand, but a hull time policy undoubtedly covers a vessel while she is laid up.

Q Whether or not notice of the laying up has been given?

A Whether or not notice of the laying up has been given.

Q In answering this question you have disregarded any endorsements that appear on the margin of the policy?

A Yes sir. I have simply dealt with the San Francisco form.

Q That is to what my question is directed?

A Yes sir.

CROSS EXAMINATION.

MR. GORHAM: Q As to whether or not a particular policy, San Francisco form of hull time policy actually covered a vessel while she was laid up would depend upon the terms and conditions of the policy itself including all its endorsements, would it not?

A I would say so naturally.

Q So that to determine in any specific instance whether a particular vessel insured under a San Francisco form is covered while she is laid up, you would have to examine the entire contract of insurance to determine for yourself?

A I would say naturally, yes.

Q You are now only testifying to the general form—in answer to questions by counsel for the libellant, you are testifying with reference to the general San Francisco form, the general form, without reference to the specific endorsements that might be put on the particular policy?

A Yes sir. I will go a bit further by saying I had in mind the general practice as applied to the usual form of hull time.

Q That practice would be varied according to the stipulations endorsed on the particular policy?

A Undoubtedly.

Q And that was governed in this specific instance?

A Yes sir.

United States of America, State and Northern District of California, City and County of San Francisco, ss.

I, JAMES P. BROWN, a United States Commissioner for the Northern District of California, do hereby certify that in pursuance of the stipulation hereunto annexed on Thursday, February 3rd, 1911, at the office of Messrs. Page, McCutchen, Knight & Olney, I was attended by IRA CAMPBELL, ESQ., proctor for the libellant, and WILLIAM H. GORHAM, ESQ., proctor for the respondent, and by the witnesses who were of sound mind and lawful age, and that the witnesses were by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth in said cause; that said depositions were, pursuant, to the stipulation of the proctors for the respective

parties hereto taken in shorthand by CLEMENT BENNETT, and afterwards reduced to typewriting; that the reading over and signing of said depositions of the witnesses was by the aforesaid stipulation expressly waived.

I further certify that I have retained the said depositions in my possession for the purpose of delivering the same with my own hand to the United States District Court for the Northern District of Washington, Northern Division at Seattle, Washington, the court for which the same were taken.

And I further certify that I am not of counsel nor attorney for any of the parties in the said depositions and caption named, nor in any way interested in the event of the cause named in the said caption.

In Witness Whereof, I have hereunto subscribed my hand at my office in the City and County of San Francisco, State of California, this 8th day of February, 1911.

(Seal)

JAS. P. BROWN.

U. S. Commissioner, Northern District of California,
at San Francisco.

In the United States District Court for the Western District
of Washington, Northern Division.

Consolidated under No. 3849.

INDEPENDENT TRANSPORTATION COMPANY, Libellant,
vs.

CANTON INSURANCE OFFICE, LIMITED, ET AL, Respondents.

ORDER PUBLISHING DEPOSITIONS.

Upon stipulation of the parties,

It is Ordered that the depositions of Louis Rosenthal et al, taken on behalf of respondents before Clement Bennett, notary public at San Francisco, California, May 17, 1910, and of W. H. LaBoyteaux et al, taken on behalf of libellant before James P. Brown, United States Commissioner at San Francisco, California, on February 2, 1911, be published.

Dated Seattle, Washington, March, 15, 1911.

C. H. HANFORD, Judge.

(Endorsed): Filed in the U. S. District Court, Western Dist. of Washington, Mar. 15, 1910. R. M. Hopkins, Clerk.

United States District Court, Western District of Washington, Northern Division. In Admiralty.

No. 3849.

Filed Dec . 1st, 1913.

INDEPENDENT TRANSPORTATION COMPANY, Libellant,

vs.

CANTON INSURANCE OFFICE, LIMITED, ET AL, Respondents.

Ira A. Campbell, Kerr & McCord, for Libellant.

William H. Gorham, for Respondents.

Neterer, District Judge.

On July 3, 1907, the respondents, Yang Tsze Insurance Association, Canton Insurance Office, and the China Traders' Insurance Company, issued to libellants policies on insurance in the sum of \$3,000, \$4,000 and \$2,000, respectively, upon the steamer "Vashon," each policy bearing an endorsement as follows:

"Warranted employed in the general freight and passenger business on Puget Sound within a radius of thirty miles from Seattle."

The policies were for a term of one year. Separate actions in admiralty were commenced against the respondent insurance companies, which actions were consolidated for trial by order of court. The vessel was running from Seattle to Alki Point, carrying chiefly passengers. She continued in that business until she was laid up sometime in August. She was moored at King Street dock, Seattle Harbor, until the 3rd of December, when she was taken to Duwamish River, emptying into Elliott Bay. The steamer sunk on the 15th day of December, 1907. Soon thereafter operations were commenced to save and preserve the vessel under the supervision of E. E. Gibbs, surveyor for the San Francisco Board of Underwriters, and Frank Walker, a marine surveyor, both of these men being employed by the owners of the vessel. Gibbs was not authorized to act for the respondents, but gave them information with relation to the progress of the work and the condition of the vessel. December 20, 1907, the respondents were notified of the accident and informed that the vessel was being raised under the superintendence of Gibbs and Walker. On Jan-

uary 11, 1908, she was floated and moored and found in such condition that it was impossible for the surveyors to determine the extent of the injuries, and upon the recommendation of the surveyors she was hauled out of the water and strakes removed from her hull, so that she could be cleaned and a detailed survey made. On January 27th a contract was entered into with P. D. Sloane to have the vessel hauled out. On February 16, 1908, the vessel was delivered to Mr. Sloane for that purpose, and on March 18th the vessel was taken out of the water, strakes removed, hull cleaned, and Gibbs and Walker made a preliminary survey, and recommended, in view of its damaged condition, that the vessel be sold. On March 31st, some of the underwriters other than the respondent agreed to a sale, the price to be approved by Mr. Gibbs. On April 15th, no satisfactory offer having been obtained, Gibbs and Walker proceeded to and completed their detailed survey of the damage, on receipt of which libellants concluded to abandon the vessel to the underwriters, and so notified the Board of Underwriters in San Francisco by wire, and on April 16th served formal notice of abandonment.

The respondent contends that the warranty upon the policy was a continuing condition upon the ship's employment during the time covered by the policy; that the vessel not being engaged in the traffic designated in the warranty at the time of the loss, no liability attached; and further contends that the abandonment of the vessel was not timely; also contends that the vessel was sold by the owners and the libellants in this case during the time that it was covered by the policies and the policies lapsed by reason of such sale; that the Duwamish River, the place where the boat was laid up was without the limits prescribed by the warranty upon the policy.

The testimony shows that from the time the vessel was sunk reasonable diligence was exercised by the owners to float the vessel and to ascertain the extent of the damage. The owners of the vessel employed marine surveyors, one of whom was Mr. Gibbs, who represented the San Francisco Board of Underwriters, to take charge of the raising of the vessel and ascertain the extent of the damage. All of the testimony shows that reasonable care was exercised in arranging for the raising of the vessel, although the speed expected was not realized. There is no testimony on the

part of the respondents upon this subject. There is nothing which shows the libellants negligent. As soon as the extent of the damage was ascertained, the Board of Underwriters, the respondents included, were immediately notified of the abandonment.

The testimony also shows that during the month of August, 1907, certain negotiations for the sale of the steamer "Vashon" to the Katalla Campony were inaugurated by C. P. Converse, assistant to the president of the Katalla Company, in the latter's absence. Converse in the president's name submitted the character of the vessel and purchase price to Mr. Eccles, the general manager, and his authorization was requested to complete the purchase. This telegram was confirmed by letter signed by Converse in the president's name with the initial "C" affixed. Eccles testified that he did not know whose handwriting the signature was but "would imagine" it was that of Converse. Eccles telegraphed authorization for the purchase, subject to proper inspection, in which he requested to have John Rosene join. Rosene reported boilers and machinery in good condition. A receipt for the vessel was signed by Converse, in which the Katalla Company agreed to pay libellant \$25,500, upon receipt of a proper bill of sale. A proper bill of sale was delivered to and accepted by Converse for the Katalla Company and passed as correct and in legal form by the counsel for the Katalla Company. The voucher was prepared by the auditor of the Katalla Company, but the treasurer of the company, Captain Jarvis, refused to sign the check for the purchase price and telegraphed Eccles:

Katalla Company has arranged with your authority to buy vessel for Copper River \$25,500 * * * I would not pay \$5,000 for her * * * Have declined to pay. Please withdraw authority.

The treasurer of the Katalla Company continued to refuse to sign the check and notified libellant on August 10, 1907, that the purchase would not be consummated. Eccles and the president of the Katalla Company denied authority of Converse to bind the Company. On August 15th, libellant commenced suit against the Katalla Company for \$25,500, the purchase price. On April 4, 1908, an agreement was reached between libellant and the Katalla Company whereby the action commenced by the Katalla Company was thereafter dismissed, upon the Katalla

Company paying \$5,000. The agreement recites that libellants have incurred large expenses in maintaining the steamer, and had suffered losses by suspending operations of the steamer which the Katalla Company was desirous of aiding them to recuperate without ratifying the alleged purchase by Converse.

The testimony further disclosed by a strong preponderance of the evidence that the form of policy in issue, referred to as the "San Francisco Hull Time Policy" covers a vessel when laid up. The following witnesses, produced on the part of the respondent, in cross-examination said:
Rosenthal:

"They are usually held covered, especially when laid up in customary and usual places."

Pinkham:

"The San Francisco policy will cover a vessel at all times, whether laid up or in commerce."

Smith:

"An underwriter would always prefer to have the vessel laid up than going * * * If notification is sent them with the policy, an endorsement is made thereon reducing the premium and covering the risk while laid up.

"Q Supposing there is no reduction of premium?

"A I would not consider it necessary for me to notify the company in that case.

"Q They would be held covered where they were laid up any way?

"A I think they would be held covered while laid up, whether they notified the company or not."

Thompson:

"Q Under the San Francisco form of hull time policy, such as this, does the trade hold the vessel covered while she is laid up, if there is no return premium?

"A In my opinion they do, if the hazard is not increased I should like to add, by so doing."

Barneson:

"Q Did you ever have any experience with a warranty in these exact words?

"A I think not.

“Q. You have never heard a warranty of that character discussed among the underwriters?”

“A. No sir, I think not.”

Taylor for libellant states that it is customary for vessel under form of policy in issue to be covered while laid up.

The fact that negotiations were entered into for the purpose of sale or purchase of the steamer “Vashon” would not avail the respondents anything, unless the negotiations resulted in a consummated transaction. It is very evident from the testimony in this case that the beginning of negotiations were not from an authoritative source, that the course was interrupted and the vessel never delivered. The possession always remained with the libellants. The signing of a receipt by Converse for the vessel, under the circumstances shown by the testimony, would not transfer title as against the unpaid purchase price and possessory title of libellants. All of the testimony shows that the transaction was never consummated; possession was never surrendered, nor attempt made by one authorized to acknowledge receipt of possession for the Katalla Company; hence this would not jeopardize any rights of the libellants in the insurance policies. The reason for a stipulation in an insurance policy against change of ownership is very apparent. The moral hazard in insurance is large, and the change of ownership from a desirable to an undesirable party is material, and under the law any change is fatal to the life of a policy. In the instant case the possession never passed; no authority or influence of any kind or nature had operation upon or over the vessel, hence could not affect the risk.

The testimony in this case, I think, reasonably shows that the place where the boat was moored or laid up at the mouth of the Duwamish River is within the limits prescribed by the policy. There is testimony that this was a customary and usual place where vessels were laid up, and was considered safe in shipping circles; it is a place where the tide ebbs and flows, and is on Elliott Bay only a short distance from the city of Seattle. The Supreme Court of Texas in *Insurance Company v. Clarke*, 157 S. W. 291:

‘Appellant contends that the words ‘gulf waters’ should be construed according to their plain, ordinary meaning, and

that so construed, gulf waters are waters of the gulf, and that river waters became gulf waters when they have flowed down into the gulf, and, conversely gulf waters became river waters, when by the action of the tides and winds they have flowed or have been blown into rivers that as long as water is in the river, it is river water, and as long as it is in the gulf, it is gulf water, and that therefore the provisions of the policy which limited the tug to gulf waters, meant just gulf waters and not waters of rivers”

The court holds that this contention is too narrow; that the vessel was covered while in the tidal waters of the river, following the case of *Waring v. Clarke*, 46 U. S. 441, in which the Supreme Court defines the “sea” to mean not alone ‘high seas’ but the ‘arms of the sea’, ‘waters flowing from it into ports and havens and as high up rivers as the tide ebbs and flows.’ The Texas Court adds: ‘If such be the sea, certainly gulf waters may be construed to mean the waters as high up as the tide ebbs and flows.’ Again ‘that waters within the ebb and flow of the tides are considered the sea is decided in the matter of Gwin’s Will. 1 Tuck. 44; also in the case of *Cole v. White*, 26 Wend. 516.’ This language with greater force applies here.

The contention that no liability could attach because of a breach of warranty in the policy, in that the vessel was laid up and not employed in the general passenger and freighting business on Puget Sound is not well founded. This was presented to Judge Hanford, and the reasons then given express my views as to the use of the word “employed”, when used in connection with the evidence in this case.

Respondent cites the following authorities:

- Robertson v. Insurance Co.*, 91 N. E. 372;
- Hearne v. Marine Ins. Co.*, 20 Wall. 488, 94;
- Wilson v. Gray*, 127 Mass. 98;
- United States v. Catherine*, 25 Fed. Cas. 332;
- United States v. Morris*, 39 U. S. 464;
- United States v. Buchanan*, 8 How. 83;
- Moran v. Prather*, 23 Wall. 492;
- 1 Parson on Marine Insurance, 337;
- 1 Phillips Insurance, (3d ed.), Sec. 754, 762;
- 1 Arnold, (2d ed. by Perkins), Sec. 213, 214;
- Hazzard v. Northeast Ins. Co.*, 8 Pet. 557. 80;
- Pearson v. Conn. Ins. Co.*, 1 App. Cas. 498;

2 Aspinwall's Marine Cases, 100;
In Birrell v. Dryer, 9 App. Cas. 345;
 5 Aspinwall's Marine Cases, 267;
Slinkard v. Manchester Fire Insurance Co., 122 Cal.
 595; 55 Pac. 417;
Bernicia Agr. Works v. Germania Ins. Co., 97 Cal. 468;
Mawhinney v. Ins. Co., 98 Cal. 184;
 Woods, Insurance, Sec. 47;
 2 Arnold, Insurance, pp. 998, 1052 ;
 2 Parsons Marine Insurance.

Libellant presents the following:

Templeton on Marine Insurance, p. 47;
 Owens' Digest Marine Insurance, p. 76;
Young v. Union Ins. Co., 24 Fed. 279;
Copeland v. Phoenix, 1 Woolworth, 278;
Marshall v. Insurance Co., 4 Cranch 202;
Hurtin v. Phoenix Ins. Co., 1 Wash. U. S. C. C. 400;
Maryland v. Ruden, 6 Cranch, 338;
Livingston v. Ins. Co., 7 Cranch 506;
Cosley v. Company, 22 Am. Dec. 337;
Radcliff v. Coster, 1 Hoff. Ch. 98;
Insurance Company v. Copelin, 76 U. S. 461;
Hume v. Frens, 150 Fed. 502;
Soelberg v. Insurance Company, 119 Fed. 23;
Washburn v. Insurance Company, 82 Fed. 296;
Harvey v. Insurance Co., 79 N. W. 895, 900;
Titlemore v. Vermont Mutual Ins. Co., 20 Vt. 546;
Hitchcock v. Insurance Company, 26 N. Y. 68;
Bell Ins. Co., 5 Robb. 423;
Worthington v. Bearse, 12 Allen 382;
Carroll v. Insurance Co., 8 Mass. 515;
Power v. Ins. Co., 19 Louis 28;
Howard v. Insurance Co., 3 Denio 301;
 1 Phil. Ins., Sec. 89;
Whitney v. Insurance Co., 59 Pac. 897;
Insurance Company v. Asbury, 27 S. E. 667;
Hill v. Insurance Co., 59 Pa. St. 474;
Insurance Co. v. Kelly, 32 Md. 421;
Power v. Ocean Ins. Co., 19 L. R. A. (NS) 28;
*Independent Transportation Co. v. Canton Insurance
 Office*, 173 Fed. 564;
 2 Cook on Corporations, p. 719;
Fregang v. R. R. Co., 154 Fed. 640;
 3 Cook on Corporations, 716, 717;

Manning v. Gist, 3 Dougl. 74;
Harrington v. Halkeld, 2 Park. Ins., 634;
Jeffry v. Lyender, 3 Lev. 32;
Park on Insurance, 96th ed.
2 Arnold on Insurance 1022;
Byron v. Insurance Co., 25 Wend. 617;
Evans v. Insurance Co., 44 N. Y. 146;
DePayster v. Insurance Co., 19 N. Y. 272;
Wallenstein v. Insurance Co., 44 N. Y. 203;
McCall v. Insurance Co., 66 N. Y. 503;
Robinson v. Insurance Co., 68 N. Y. 192;
Peele v. Insurance Co., 3 Mason 27;
Nash on Insurance, 482;
Mills v. Fletcher, 1 Dougl. 219;
Bullard v. Insurance Co., Fed. Cases No. 2122, 1 Carter, 148;

Without analyzing the various authorities or entering upon a further discussion, it is concluded that libellants are entitled to recover the amount of the policies, and it is directed that a decree be entered accordingly.

JEREMIAH NETERER,
Judge.

(Endorsed): Filed in the U. S. District Court, Western Dist. of Washington Northern Division, Dec. 1. 1913. Frank L. Crosby, Clerk. By B O W Deputy.

In the United States District Court for the Western District
of Washington, Northern Division.

No. 3848

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Li-
bellant,

vs.

THE YANG-TSZE INSURANCE ASSOCIATION, LTD., Respondent,

No. 3849

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Li-
bellant,

vs.

CANTON INSURANCE OFFICE, LTD., Respondent,

No. 3858

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Li-
bellant,

vs.

CHINA TRADERS INSURANCE COMPANY, Respondent.

FINAL DECREE.

This cause coming on to be heard at this term, the said three causes above entitled having been consolidated by order of this court, and the same was argued by counsel and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

I.

That the libellant, Independent Transportation Company, a corporation, do have and recover of and from the Yangtsze Insurance Association, Limited, a corporation, the sum of \$2850, the proportionate part of said Company's loss of the steamer Vashon, and the further sum of \$846.12; being the proportionate part of said respondent's proportion of the expenses incurred in laboring to save and preserve said steamer by way of salvage charges and costs of making adjustment, together with interest on said aggregate sum of \$3696.12 at the rate of six per cent per annum from April 15th, 1908, in the sum of \$1256.68, or a total of \$4952.80, and in addition thereto three-ninths of the costs to be herein taxed.

II.

It is further ordered, adjudged and decreed that the libelant, Independent Transportation Company, do have and recover of and from the Canton Insurance Offices, Limited, a corporation, the sum of \$3800.00, the proportionate part of said Company's loss of the steamer Vashon, and the further sum of \$1128.16, being the proportionate part of said respondent's proportion of the expenses incurred in laboring to save and preserve said steamer by way of salvage charges and cost of making adjustment, together with interest on said aggregate sum of \$4928.16 at the rate of six per cent per annum from April 15th, 1908, in the sum of \$1675.57, making a total of \$6603.73, and in addition thereto four-ninths of the costs to be herein taxed.

III.

It is further ordered, adjudged and decreed that the libelant, Independent Transportation Company, do have and recover of and from the China Traders Insurance Company, a corporation, the sum of \$1900, the proportionate part of said company's loss of the steamer Vashon, and the further sum of \$564.08, being the proportionate part of said respondent's proportion of the expenses incurred in laboring to save and preserve said steamer by way of salvage charges and costs of making adjustment, together with interest on said aggregate sum of \$2464.08 at the rate of six per cent per annum from April 15th, 1908, in the sum of \$837.78, or a total of \$3301.86, and in addition thereto two-ninths of the costs to be herein taxed.

IV.

And it is further ordered, adjudged and decreed that unless this decree be satisfied or proceedings thereon be stayed on appeal within the time limited and prescribed by the rules and practice of this court, the libelant have execution against each of the several respondents for the sums aforesaid and said costs to satisfy this decree.

Dated at Seattle, Washington, December 15th, 1913.

JEREMIAH NETERER,
Judge.

(Endorsed): Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Dec. 15, 1913. Frank L. Crosby, Clerk, by E. M. L., Deputy.

In the United States District Court for the Western District
of Washington, Northern Division.

In Admiralty.

No. 3848

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Li-
bellant,

vs.

THE YANG-TSZE INSURANCE ASSOCIATION, LIMITED, a corpora-
tion, Respondent.

No. 3849

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Li-
bellant,

CANTON INSURANCE OFFICE, LIMITED, Respondent.

No. 3858

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Li-
bellant,

vs.

CHINA TRADERS INSURANCE COMPANY, Respondent.

Consolidated under Cause No. 3849.

SUMMONS AND SEVERANCE.

To the China Traders Insurance Company, a corporation,
respondent, in the above entitled cause No. 3858, con-
solidated with said causes Nos. 3848 and 3849 under
No. 3849.

You are hereby invited to join with the Yang-Tsze In-
surance Association, a corporation, and the Canton Insur-
ance Office, Limited, a corporation, above named respond-
ents, in said Causes Nos. 3848 and 3849, consolidated with
said cause No. 3858 under Cause No. 3849, on the 30th day
of December, 1913, and prosecute an appeal in the above en-
titled causes, consolidated under No. 3849, to the United
States Circuit Court of Appeals for the Ninth Circuit, to
reverse the decree in the above entitled causes Nos. 3848,
3849 and 3858, consolidated as aforesaid, under cause No.
3849, rendered and entered on December 15, 1913, by said

United States District Court for the Western District of Washington, Northern Division, sitting in Admiralty, or you will be deemed to acquiesce in said decree and the said Yang-Tsze Insurance Association, a corporation, and Canton Insurance Office, Limited, a corporation, respondents as aforesaid, shall prosecute said appeal without joining you as appellant.

Dated Seattle, Washington, December 27, 1913.

YANG-TSZE INSURANCE ASSOCIATION,
By William H. Gorham, Its Proctor,

CANTON INSURANCE OFFICE, Limited,
By William H. Gorham, Its Proctor.

Due and timely service of the above summons and severance by copy at Seattle, Washington, is hereby acknowledged this 27th day of December, 1913, and said invitation to join in the prosecution of said appeal to the United States Circuit Court of Appeals for the Ninth Circuit is hereby declined and refused.

Dated Seattle, Washington, December 27, 1913.

CHINA TRADERS INSURANCE COMPANY,
By William H. Gorham, Its Proctor,

(Endorsed): Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Dec. 30, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy.

In the United States District Court for the Western District
of Washington, Northern Division.

In Admiralty.

No. 3848

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Li-
bellant,

vs.

THE YANG-TSZE INSURANCE ASSOCIATION, LIMITED, a corpora-
tion, Respondent.

No. 3849

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Li-
bellant,

vs.

CANTON INSURANCE OFFICE, LTD., Respondent,

No. 3858

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Li-
bellant,

vs.

CHINA TRADERS INSURANCE COMPANY, Respondent.

Consolidated Under Cause No. 3849.

These Causes Nos. 3848 and 3849, consolidated with
cause No. 3858 under Cause No. 3849, coming on for hear-
ing upon the application of the respondents, Yang Tsze In-
surance Association and Canton Insurance Office, Limited,
for an order fixing the amount of the bond to stay the exe-
cution of the final decree against said respondents, Yang-
Tsze Insurance Association and Canton Insurance Office,
Limited, heretofore on December 15, 1913, rendered, made
and entered in said cause upon appeal from said decree by
said respondent, Canton Insurance Office, Limited,

The Court being fully advised in the premises,

It is ordered:

1. That the bond which said respondent Yang-Tsze In-
surance Association shall give, in addition to the sum of
two hundred and fifty (\$250.00) dollars for costs on appeal,
to stay the execution of the final decree against said res-

pondent Yang-Tsze Insurance Association heretofore on December 15, 1913, rendered and entered in said consolidated cause in said District Court, shall be the further sum of six thousand (\$6000.00) dollars, conditioned according to law.

2. That the bond which said respondent Canton Insurance Office, Limited, shall give, in addition to the sum of two hundred and fifty (\$250.00) dollars for costs on appeal, to stay the execution of the final decree against said respondent Canton Insurance Office, Limited, heretofore on December 15, 1913, rendered and entered in said consolidated cause in said District Court shall be the further sum of seven thousand five hundred (\$7500.00) dollars, conditioned according to law.

Dated Seattle, Washington, December 30, 1914.

JEREMIAH NETERER,
Judge.

(Endorsed): Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Dec. 30, 1913. Frank L. Crosby, Clerk; Ed. M. Lakin, Deputy.

In the United States District Court for the Western District
of Washington, Northern Division.

In Admiralty.

No. 3848

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Li-
bellant,

vs.

THE YANG-TSZE INSURANCE ASSOCIATION, LIMITED, a corpora-
tion, Respondent.

No. 3849

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Li-
bellant,

vs.

CANTON INSURANCE OFFICE, LTD., Respondent,

No. 3858

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Li-
bellant,

vs.

CHINA TRADERS INSURANCE COMPANY, Respondent.
Consolidated Under Cause No. 3849.

NOTICE OF APPEAL.

To the Independent Transportation Company, a corporation,
the above named Libellant, in Causes Nos. 3848, 3849
and 3858, consolidated under No. 3849, and to Ira
A. Campbell, Esquire, and Messrs. Kerr & McCord,
Its Proctors:

To China Traders Insurance Company, a corporation, the
above named Respondent in Cause No. 3858, consoli-
dated with said Causes Nos. 3848 and 3849 under No.
3849, and to William H. Gorham, Esquire, Its Proctor:

You and each of you will please take notice that the
Yang-Tsze Insurance Association, a corporation, and the
Canton Insurance Office, Limited, a corporation, the above
named respondents in Causes Nos. 3848 and 3849, consoli-
dated with Cause No. 3858 under Cause No. 3849, hereby
appeal from so much of the final decree of the above entitled
court in said causes Nos. 3848, 3849 and 3858 consolidated
under No. 3849, as is in favor of said libellant and against

the said respondent, the Yang-Tsze Insurance Association in the sum of forty-nine hundred and fifty-two and 80/100 (\$4952.80) dollars and in addition thereto three-ninths of the costs therein taxed at \$186.36 and as in favor of said libellant and against the said respondent, Canton Insurance Office, Limited, in the sum of sixty-six hundred and three and 73/100 (\$6603.73) dollars and in addition thereto four-ninths of the costs therein taxed at \$186.36 and as orders, adjudges and decrees that unless said decree be satisfied or proceedings thereon be stayed on appeal within the time limited and prescribed by the rules and practice of this court, said libellant have execution against each of the said several respondents for the sums so decreed and costs, as aforesaid, to satisfy said decree, which said decree was made, entered and filed in said causes Nos. 3848, 3849 and 3858, consolidated under No. 3849, on the 15th day of December, 1913, to the United States Circuit Court of Appeals, for the Ninth Circuit.

YANG-TSZE INSURANCE ASSOCIATION,
CANTON INSURANCE OFFICE, LIMITED.

Respondents in said Causes Nos. 3848 and 3849, consolidated with said Cause No. 3858 under No. 3849 .

WILLIAM H. GORHAM,
Proctor for Respondents,
Yang-Tsze Insurance Association and
Canton Insurance Office, Limited.

United States of America, Western District of Washington.
—ss.

Due service of the within notice of appeal after the filing of the same in the office of the Clerk of the above entitled court., admitted this 30th day of December, 1913, at Seattle, Washington.

KERR & McCORD,
IRA CAMPBELL,
Proctors for above named Libellant,
Independent Transportation Company.

WILLIAM H. GORHAM,
Proctor for China Traders Insurance
Company, a corporation, respondent in
said Cause No. 3858 consolidated with
Causes Nos. 3848 and 3849 under No.
3849.

(Endorsed): Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Dec. 30, 1913. Frank L. Crosby, Clerk. By E. M. Lakin, Deputy.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. —

CANTON INSURANCE OFFICE LIMITED, a corporation,
THE YANG-TSZE INSURANCE ASSOCIATION, a corporation, Ap-
pellants,

vs.

INDEPENDANT TRANSPORTATION COMPANY, a corporation,
THE CHINA TRADERS INSURANCE COMPANY, a corporation,
Appellees.

APPEAL BOND.

Know All Men by these Presents, That we, Canton Insurance Office, Limited, a corporation, one of the respondents above named, as principal, and Equitable Surety Company, of St. Louis, Missouri, as surety, are held and firmly bound unto the Independent Transportation Company, a corporation, libellant, above named, in the full and just sum of seven thousand seven hundred fifty (\$7750.00) dollars, lawful money of the United States of America, to be paid to the said Independent Transportation Company, its successors and assigns for which payment, well and truly to be made, we bind ourselves, our and each of our successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 31st day of December, 1913.

Whereas, lately, to-wit: On December 15, 1913, at a District Court of the United States for the Western District of Washington, Northern Division, in a suit pending in said court between said Independent Transportation Company and Yang-Tsze Insurance Association, Canton Insurance Office, Limited, and China Traders Insurance Company, a final decree was rendered severally against said Yang-Tsze Insurance Association, Canton Insurance Office, Limited, and China Traders Insurance Company, and in favor of said Independent Transportation Company, and the said Canton Insurance Office, Limited, together with the Yang-Tsze Insurance Association, a corporation, respondents above named, having filed and served a notice of appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree complained of, to reverse the said final decree,

and having obtained a citation directed to said Independent Transportation Company and to the China Traders Insurance Company, a corporation, one of the respondents above named of date December 30, 1913, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be holden at the City of San Francisco, in said circuit, within thirty days from the date thereof.

Now, the condition of the above obligation is such that if the above bounden, Canton Insurance Office, Limited, shall prosecute its appeal to effect and pay the costs if the appeal is not sustained and shall abide by and perform whatever decree may be rendered by said United States Circuit Court of Appeals for the Ninth Circuit, in the cause, or on the mandate of said United States Circuit Court of Appeals for the Ninth Circuit by the Court below, then this obligation to be void, otherwise to be and remain in full force and effect.

CANTON INSURANCE OFFICE, LIMITED,
By William H. Gorham, Its Proctor and Agent(L.S.)
EQUITABLE SURETY COMPANY,
By Walter Morris, Its Attorney in Fact (L.S.)

The foregoing bond approved this 15th day of Jan., 1914. JEREMIAH NETERER, Judge.

(Endorsed): Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Dec. 31, 1913. Frank L. Crosby, Clerk. By E. M. Lakin, Deputy.

In the United States Circuit Court of Appeals for the Ninth Circuit.

CANTON INSURANCE OFFICE LIMITED, a corporation,
THE YANG-TSZE INSURANCE ASSOCIATION, a corporation, Appellants,

vs.

INDEPENDENT TRANSPORTATION COMPANY, a corporation,
THE CHINA TRADERS INSURANCE COMPANY, a corporation, Appellees.

APPEAL BOND.

Know All Men by these Presents, That we, Yang-Tsze Insurance Association, a corporation, one of the respondents

above named, as principal, and Equitable Surety Company of St. Louis, Missouri, as surety, are held and firmly bound unto the Independent Transportation Company, a corporation, libellant, above named, in the full and just sum of six thousand two hundred fifty (\$6250.00) dollars, lawful money of the United States of America, to be paid to the said Independent Transportation Company, its successors and assigns for which payment, well and truly to be made, we bind ourselves, our and each of our successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 31st day of December, 1913.

Whereas, lately, to-wit: on December 15, 1913, at a District Court of the United States for the Western District of Washington, Northern Division, in a suit depending in said court between said Independent Transportation Company and said Yang-Tsze Insurance Association, Canton Insurance Office, Limited, and China Traders Insurance Company, a final decree was rendered severally against said Yang-Tsze Insurance Association, Canton Insurance Office, Limited, and China Traders Insurance Company, and in favor of said Independent Transportation Company, and the said Yang-Tsze Insurance Association, together with the Canton Insurance Office, Limited, above named respondents, having filed and served a notice of appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree complained of, to reverse the said final decree, and having obtained a citation directed to said Independent Transportation Company and to the China Traders Insurance Company, a corporation, one of the respondents above named, of date December 30, 1913, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be holden at the City of San Francisco, in said Circuit, within thirty days from the date thereof.

Now, the condition of the above obligation is such that if the above bounden, Yang-Tsze Insurance Association, shall prosecute its appeal to effect and pay the costs if the appeal is not sustained and shall abide by and perform whatever decree may be rendered by said United States Circuit Court of Appeals for the Ninth Circuit, in the cause, or on the mandate of said United States Circuit Court of Appeals for the Ninth Circuit by the court below, then this

obligation to be void, otherwise to be and remain in full force and effect.

THE YANG-TSZE INSURANCE ASSOCIATION, Ltd.,
By E. H. Hutchison, Its Manager, (L.S.)

EQUITABLE SURETY COMPANY,
By Walter E. Morris, Its Attorney in Fact. (Seal)

The foregoing bond approved this 15th day of Jan.,
1914. JEREMIAH NETERER, Judge.

(Endorsed): Filed in the U. S. District Court, Western
Dist. of Washington, Northern Division, Dec. 31, 1913. Frank
L. Crosby, Clerk. By E. M. Lakin, Deputy.

In the United States Circuit Court of Appeals for the Ninth
Circuit.

No. 3849

CANTON INSURANCE OFFICE LIMITED, a corporation,
THE YANG-TSZE INSURANCE ASSOCIATION, a corporation, Ap-
pellants,

vs.

INDEPENDENT TRANSPORTATION COMPANY, a corporation,
THE CHINA TRADERS INSURANCE COMPANY, a corporation,
Appellees.

CITATION.

The President of the United States of America:

To the Independent Transportation Company, a corporation,
the above named Libellant, in Causes Nos. 3848, 3849
and 3858, consolidated under No. 3849, and to Ira A.
Campbell, Esquire, and Messrs. Kerr & McCord, Its
Proctors; and

To China Traders Insurance Company, a corporation, the
above named Respondent in Cause No. 3858, consoli-
dated with said Causes Nos. 3848 and 3849, under No.
3849, and to William H. Gorham, Its Proctor:

You and each of you are hereby cited and admonished
to appear at the United States Circuit Court of Appeals for
the Ninth Circuit to be holden at the City of San Francisco,
State of California, within thirty (30) days from the date
hereof pursuant to an appeal filed in the office of the Clerk
of the United States District Court for the Western District

of Washington, Northern Division, whereof the Yang-Tsze Insurance Association, a corporation, and the Canton Insurance Office, Limited, a corporation, respondents above named, are appellants and you are appellees, to show cause, if any there be, why the decree rendered against appellants, as in said appeal, should not be corrected and why speedy justice should not be done for the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States of America this 30th day of December, 1913.

JEREMIAH NETERER,
 Judge of the United States District Court for the Western District of Washington, Northern Division.

United States of America, Western District of Washington.
 —ss.

Due service of within Citation at Seattle, Washington this 30 th day of December, 1913, hereby admitted.

IRA A. CAMPBELL,
 KERR & McCORD,
 Proctors for Independent Transportation Company, Libellant and Appellee.

WILLIAM H. GORHAM,
 Proctor for China Traders Insurance Company, a corporation, respondent in said cause No. 3858 consolidated with Nos. 3848 and 3849 under No. 3849.

RETURN ON SERVICE OF WRIT.

United States of America, Western District of Washington.
 I hereby certify and return that I served the annexed citation on the therein named William H. Gorham, proctor, by handing to and leaving a true and correct copy thereof with William H. Gorham, at Seattle, in said District on the 30th day of December, A. D. 1913.

JOSEPH R. H. JACOBY,
 U. S. Marshal

By L. A. MILLER, Deputy.
 Marshal's fees \$2.00.

RETURN SERVICE OF WRIT.

United States of America, Western District of Washington.

I hereby certify and return that I served the annexed citation on the therein named Kerr & McCord, proctors, by handing to and leaving a true and correct copy thereof with James A. Kerr, a member of said firm of Kerr & McCord, at Seattle, in said District on the 31st day of December, A. D. 1913.

JOSEPH R. H. JACOBY,
U. S. Marshal

By H. V. R. ANDERSON, Deputy.

Marshal's fees \$2.12.

(Endorsed): Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Dec. 30, 1913.

FRANK L. CROSBY, Clerk, by Ed. M. Lakin, Deputy.

In the United States District Court for the Western District
of Washington, Northern Division.

In Admiralty.

No. 3848

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Li-
bellant,

vs.

THE YANG-TSZE INSURANCE ASSOCIATION, LIMITED, a corpora-
tion, Respondent.

No. 3849

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Li-
bellant,

vs.

CANTON INSURANCE OFFICE, LIMITED, Respondent.

No. 3858

INDEPENDENT TRANSPORTATION COMPANY, a corporation, Li-
bellant.

vs.

CHINA TRADERS INSURANCE COMPANY, Respondent.
Consolidated under Cause No. 3849.

ASSIGNMENTS OF ERROR.

The above named respondents Yang Tsze Insurance Association and Canton Insurance Offictee, Limited, assign for error in the findings, conclusions and decree of the District Court in the above entitled causes Nos. 3848 and 3849, consolidated with Cause No. 3858 under No. 3849, that the learned Judge thereof erred.

First: In finding that, on January 11, 1908, when the vessel "Vashon" referred to in the 3rd amended libels in said causes was floated and moored. it was found in such condition that it was impossible for the surveyors to determine the extent of the injuries;

Second: In finding that from the time the vessel was sunk, reasonable diligence was exercised by the owner to float the vessel and to ascertain the extent of the damage;

Third: In finding that reasonable care was exercised in arranging for the raising of the vessel;

Fourth: In finding that there was nothing which showed that libellant was negligent (in raising the vessel);

Fifth: In finding that the form of policy in issue referred to as the "San Francisco Hull Time Policy" covers a vessel when laid up;

Sixth: In finding that the place where the boat was moored or laid up was at the mouth of the Duwamish River;

Seventh: In finding that the place where the boat was moored or laid up was within the limits prescribed by the policy;

Eighth: In finding that this (place where the vessel was moored or laid up) was a customary and usual place where vessels were laid up;

Ninth: In finding that this (place where the vessel was moored or laid up) was considered safe in shipping circles;

Tenth: In finding that this (place where the vessel was moored or laid up) was on Elliott Bay;

Eleventh: In concluding that the contention that no liability could attach because of a breach of warranty in the policy, in that the vessel was laid up and not employed

in the general passenger and freighting business on Puget Sound was not well founded;

Twelfth: In concluding that the libellant was entitled to recover the amount of the policies or any part thereof;

Thirteenth: In directing that a decree be entered in favor of libellant in the amount of the policies;

Fourteenth: In entering the final decree of December 15, 1913, in favor of libellant, and

(a) against respondent Yang Tsze Insurance Association in the sum of forty-nine hundred and fifty-two and 80/100 (4952.80) dollars and in addition thereto three-ninths of the costs therein taxed at \$186.36;

(b) against respondent Canton Insurance Office, Limited, in the sum of sixty-six hundred and three and 73/100 (\$6603.73) dollars and in addition thereto four-ninths of the costs therein taxed at \$186.36;

(c) and ordering, adjudging and decreeing that unless said decree be satisfied or proceedings thereon be stayed on appeal within the time limited and prescribed by the rules and practice of this court, libellant have execution against said respondents Yang Tsze Insurance Association and Canton Insurance Office, Limited, for the sums and costs aforesaid;

Fifteenth: In not sustaining the exceptions of respondents, Yang Tsze Insurance Association and Canton Insurance Office, Limited, to the Libellant's 3rd Amended Libels, respectively;

Sixteenth: In not entering a decree in favor of said respondents Yang Tsze Insurance Association and Canton Insurance Office, Limited, and against libellant, dismissing libellant's 3rd Amended Libels against them and for costs against libellant

YANG TSZE INSURANCE ASSOCIATION,
CANTON INSURANCE OFFICE, LIMITED,

Respondents in said Causes Nos. 3848 and 3849 consolidated with Cause No. 3858 under No. 3849.

WILLIAM H. GORHAM,

Proctor for Respondents, Yang Tsze Insurance Association and Canton Insurance Office, Limited.

United States of America, Western District of Washington
SS.

Due service of the within assignments of error hereby admitted this 12th day of January, 1914, at Seattle, Washington.

IRA A. CAMPBELL,
KERR & McCORD,

Proctors for Independent Transportation Company, Libellant.

CHINA TRADERS INSURANCE COMPANY,
By William H. Gorham, its proctor.

Endorsed: Assignments of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Jan. 12, 1914. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3849

CANTON INSURANCE OFFICE LIMITED, a corporation,
THE YANG-TSZE INSURANCE ASSOCIATION, a corporation, Appellants.

vs.

INDEPENDENT TRANSPORTATION COMPANY, a corporation,
THE CHINA TRADERS INSURANCE COMPANY, a corporation, Appellees.

Notice.

To INDEPENDENT TRANSPORTATION COMPANY, a corporation, and to CHINA TRADERS INSURANCE COMPANY, and to IRA CAMPBELL, ESQUIRE, and MESSRS. KERR & McCORD, Proctors for said Independent Transportation Company, and to WILLIAM H. GORHAM, ESQUIRE, Proctor for China Traders Insurance Company:

You and each of you are hereby notified that the Canton Insurance Office, Limited, one of the above named appellants, has this day filed a bond in the sum of seventy-seven hundred and fifty (\$7750.00) dollars, staying execution of the decree in the above entitled cause in the court below, conditioned as required by law, and that the name and address of the surety on said bond is:

Equitable Surety Company of St. Louis, Missouri, a corporation, Walter E. Morris, its attorney in fact, c/o Frank Waterhouse & Co., Inc., Central Bldg., Seattle, Washington.

You and each of you are hereby notified that the Yang Tsze Insurance Association, one of the above named appellants, has this day filed a bond in the sum of six thousand and two hundred and fifty (\$6250.00) dollars staying execution of the decree in the above entitled cause in the court below, conditions as required by law, and that the name and address of the surety on said bond is:

Equitable Surety Company of St. Louis, Missouri, a corporation, Walter E. Morris, its attorney in fact, c/o Frank Waterhouse & Co., Inc., Central Bldg., Seattle, Washington.

Dated at Seattle, Washington, December 31, 1913.

WILLIAM H. GORHAM,
Proctor for Appellants.

Copy of within notice received this 31st day of December, 1913. Ira Campbell and Kerr & McCord, Proctors for Independent Transportation Company, Appellees; William H. Gorham, Proctor for China Traders Insurance Co., Appellee.

(Endorsed): Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Jan. 12, 1914. Frank L. Crosby, Clerk, by E. M. Lakin, Deputy.
In the United States District Court, Western District of

Washington, Northern Division. In Admiralty.

No. 3849

INDEPENDENT TRANSPORTATION COMPANY,

vs.

CANTON INSURANCE OFFICE, LTD., ET AL,

Stipulation.

It is hereby stipulated by the parties hereto that upon appeal from the decree of this Court on the merits in the above entitled cause by the respondents or any of them, at the option of respondents, there may be omitted from the record on appeal:

(1) The depositions of S. W. Eccles and Myron K. Rodgers;

(2) Exhibit 10, being a copy of Complaint of Independent Transportation Company, v. Katalla Company, Superior Court, filed herein on or about March 30, 1910;

(3) Libellant's Interrogatories attached to its answers;

(4) Libellant's answers to Interrogatories attached to respondent's answers;

(5) Exhibits 3 to 24, inclusive, all relating to matters exclusively between the libellant and Katalla Company;

(6) Exhibit 28, stipulation of parties in this cause of date April 20, 1912, in re evidence.

(7) Exhibit 29, stipulation of parties in this cause of date October 1, 1912, in re evidence;

(8) Testimony of C. A. McMasters and M. M. Perl, witnesses for Respondents as reported by Commissioner herein at pages 141-188 of Commissioner's Report;

Provided: That in the event of such omission libellant's ownership and insurable interest in the steamer "Vashon" referred to in the libels at all times in the libels mentioned shall, for all purposes of such appeal, be considered as admitted by respondents.

Dated Seattle, Washington, Dec. 26th, 1913.

(Signed) IRA A. CAMPBELL,

(Signed) KERR & McCORD,
Proctors for Libellant.

(Signed) WILLIAM H. GORHAM,
Proctor for Respondents.

(Endorsed): Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Jan. 12, 1914. Frank L. Crosby, Clerk, By Ed. M. Lakin, Deputy.

In the United States Circuit Court of Appeals for the
Ninth Circuit.

No. —

CANTON INSURANCE OFFICE, LIMITED, a corporation, ET AL,
Appellants,

vs.

INDEPENDENT TRANSPORTATION COMPANY, a corporation, ET AL,
Appellees.

Order Enlarging Time for Filing Record.

Good cause being shown, it is by the undersigned, the judge who signed the citation on appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit, ordered that the time of the appellants, Canton Insurance Office, Limited, and the Yang Tsze Insurance Association, Limited, for filing the record and docketing the cause on appeal in the United States Circuit Court of Appeals for the Ninth Circuit be and the same hereby is extended and enlarged until and including the 28th day of February, 1914.

Dated Seattle, Washington, this 23rd day of January, 1914.

JEREMIAH NETERER,
United States District Judge for the
Western District of Washington.

(Endorsed): Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Jan. 23, 1914.
Frank L. Crosby, Clerk, By....., Deputy.

In the United States District Court for the Western District
of Washington, Northern Division.

No. 3849.

INDEPENDENT TRANSPORTATION COMPANY, Libellant,

vs.

CANTON INSURANCE OFFICE, LIMITED, ET AL, Respondent.

Praecepta for Apostles.

To the Clerk of the Above Entitled Court:

Herewith I hand you 50 printed copies of the Apostles on Appeal to the United States Circuit Court of Appeals for the Ninth Circuit, consisting of the following:

- (1) A caption exhibiting the proper style of the court and the titles of the causes;
- (2) Index;
- (3) Names and Addresses of Counsel;
- (4) Stipulation with reference to Printed Record and sending up Original Exhibits as Supplemental Record;
- (5) Order for sending up original exhibits as Supplemental Record;
- (6) Order enlarging time for filing Record;
- (7) Statement required by Rules of United States Circuit Court of Appeals for Ninth Circuit;
- (8) Stipulation to Consolidate causes;
- (9) Order consolidating causes;
- (10) Third amended libel in cause No. 3848;
- (12) Stipulation as to exhibits referred to in exceptions in Cause No. 3848;
- (14) Answer to third amended libel in Cause No. 3848;
- (15) Third amended libel in Cause No. 3849;
- (17) Stipulation as to exhibits referred to in exception in Cause No. 3849;
- (19) Answer to Third Amended Libel in Cause No 3849;
- (20) Memorandum Decision on Exceptions;
- (21) All of the testimony and other proofs except such as by stipulation between the parties of date December 26, 1913, it is provided may be omitted from the record on appeal;
- (22) All memorandum decisions of the Court;
- (23) Final Decree;
- (24) Summons and Severance;

- (25) Order fixing amount of supersedeas;
- (26) Notice of Appeal;
- (27) Appeal Bonds;
- (28) Notice of filing Appeal Bonds;
- (29) Citation;
- (30) Assignments of Error;
- (31) Stipulation as to omitting part of Record;
- (32) This praecipe;

one of which copies you will please certify and all of which you will please forward to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, for filing therein.

Dated Seattle, Washington, January 31st, 1914.

WILLIAM H. GORHAM,

Proctor for Appellants, Yang Tsze Insurance Association, Limited, Canton Insurance Office, Limited.

(Endorsed): Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Feb. 3, 1914. Frank L. Crosby, Clerk, By Ed. M. Lakin, Deputy.

In the United States District Court for the Western District of Washington, Northern Division.

No. 3849.

INDEPENDENT TRANSPORTATION COMPANY, Libellant,

vs.

CANTON INSURANCE OFFICE, LIMITED, ET AL, Respondents.

CLERK'S CERTIFICATE TO TRANSCRIPT OF RECORD.

United States of America, Western District of Washington,
ss.

I, FRANK L. CROSBY, Clerk of the District Court of the United States for the Western District of Washington, do hereby certify the foregoing three hundred and sixty

pages, numbered from 1 to 230 inclusive, to be a full, true and correct copy of the record and proceedings in the above and foregoing entitled consolidated causes Nos. 3848 and 3849, as is called for by praecipe of proctor for appellants, as the same remain of record and on file in the office of the Clerk of said District Court and that the same, together with the original exhibits (except as are otherwise stipulated by the parties hereto) separately certified, constitute the apostles on appeal from the order, judgment and decree of the District Court of the United States for the Western District of Washington, to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California.

I further certify that I transmit herewith the original citation on appeal issued in said causes.

I further certify that the cost of preparing and printing the foregoing apostles on appeal is the sum of \$216.00, which has been paid by the proctor for respondents and appellants, Canton Insurance Office, Limited, and Yang Tsze Insurance Association, Limited, and that the further sum of \$203.70 has been paid me by proctor for said respondents and appellants for certifying said apostles.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 20th day of February, 1914.

(L. S.)

FRANK L. CROSBY,

Clerk.

